

Tribune Board.<sup>2439</sup> During his interview with the Examiner, Mr. Wayne stated that he recalled the VRC presentation and, in particular, the slide listing VRC's "Key Assumptions."<sup>2440</sup> Mr. Wayne stated that there was no mention during VRC's December 4, 2007 Tribune Board presentation that Morgan Stanley had been involved in assisting management in giving a representation that refinancing was a reasonable assumption,<sup>2441</sup> nor was there any discussion between Mr. Wayne and anyone from VRC before or after this meeting concerning Morgan Stanley's purported involvement in assisting management in giving a representation to VRC that Tribune could refinance its debt.<sup>2442</sup>

#### **(10) Lead Bank Questions Concerning Refinancing.**

Following VRC's December 4, 2007 Tribune Board presentation, the Lead Banks sent VRC (through Tribune management) several detailed questions concerning VRC's assumption that Tribune could refinance its debt. The Lead Banks asked VRC, "What is the assumption for the Company's ability to refinance debts as they become due and how is the assumption established?"<sup>2443</sup> VRC responded on December 7, 2007:<sup>2444</sup>

VRC has assumed that the Company will be able to refinance its debts as they become due. This assumption is based upon a review of the forecasted total debt and guaranteed debt leverage ratios at

---

<sup>2439</sup> Ex. 753 (Stewart E-Mail, dated December 3, 2007).

<sup>2440</sup> Examiner's Sworn Interview of Thomas Wayne, July 2, 2010, at 100:5-101:12.

<sup>2441</sup> *Id.* at 101:19-102:1.

<sup>2442</sup> *Id.* at 102:13-19.

<sup>2443</sup> Ex. 281 at TRB0398562 (Memorandum from Mr. Browning and Mr. Rucker to Mr. Bigelow, dated December 7, 2007).

<sup>2444</sup> *Id.* When VRC provided management with a draft of its responses to the Lead Banks' questions, Mr. Bigelow responded with a mark-up of proposed changes that included editing VRC's refinancing assumption response to read that "VRC has assumed that the Company will be able to *repay or* refinance its debts. . . ." Ex. 754 at VRC0007121 (Bigelow E-Mail, dated December 7, 2007) (emphasis added). VRC did not incorporate management's edit to this response, even though other edits in the markup were included. *Compare* Ex. 754 (Bigelow E-Mail, dated December 7, 2007) (management's markup) *with* Ex. 281 (Memorandum from Mr. Browning and Mr. Rucker to Mr. Bigelow, dated December 7, 2007) (VRC's final memorandum, edited to reflect some, but not all, edits proposed by management).

the time of the required refinancing, recent leveraged debt multiples, and representation from the Company which states that based upon recent discussions with Morgan Stanley, the Company would be able to refinance debt in its downside forecasts without the need for additional asset sales.

The Lead Banks responded to VRC's December 7, 2007 memorandum with additional questions on the refinancing representation:<sup>2445</sup>

Reference is made to VRC's answer to Question 18 in the Response in which VRC indicates that it is relying, in part, on a representation from Tribune which states that based upon recent discussions with Morgan Stanley, the Company would be able to refinance debt in its downside forecasts without the need for additional assets sales. Did VRC meet with someone from Morgan Stanley and does VRC know whether Morgan Stanley understands that Tribune is relying upon its view? Did VRC discuss this assumption with other financial institutions? To what extent did VRC consider current market conditions relevant to this analysis?

Mr. Bigelow forwarded the Lead Banks' follow-up questions to, among others, Mr. Wayne.<sup>2446</sup> Mr. Wayne stated to the Examiner that although he does not recall receiving Mr. Bigelow's e-mail with the Lead Banks' follow-up questions, he does not doubt that he did, in fact, receive it.<sup>2447</sup> Mr. Rucker stated that he does not believe VRC "provided specific answers on these or written answers or anything like that," although VRC "definitely read the questions and actually took some of the things into consideration in our analysis, but I don't know if we specifically provided any additional [answers]."<sup>2448</sup>

---

<sup>2445</sup> Ex. 755 at VRC0070618-19 (Rucker E-Mail, dated December 12, 2007).

<sup>2446</sup> Ex. 756 (Bigelow E-Mail, dated December 11, 2007).

<sup>2447</sup> Examiner's Sworn Interview of Thomas Wayne, July 2, 2010, at 107:22-109:10.

<sup>2448</sup> Examiner's Sworn Interview of Mose Rucker and Bryan Browning, June 30, 2010, at 278:8-22. *See also id.* at 281:5-9 (Mr. Browning: "I think what we did was . . . we had a call to discuss the issues and whether we felt that we considered these in our analysis.").

Mr. Bigelow stated the Lead Banks' follow-up questions were answered verbally, with no written response.<sup>2449</sup> Verbal responses were apparently given during a December 17, 2007 conference call that included, among others, Thomas Kenny of Murray Devine, a firm hired by the Lead Banks to "educate" them on solvency matters,<sup>2450</sup> and Tony Grimminck of JPM, both of whom took notes during the meeting.<sup>2451</sup> Mr. Kenny's handwritten notes appear to reference the Lead Banks' follow-up question concerning the refinancing representation: "Co. has used Morgan Stanley as solvency [advisor]. Mgt. believes company is solvent & can service debt."<sup>2452</sup> Mr. Grimminck's notes are similar. Under the heading "VRC report and solvency analysis," Mr. Grimminck wrote: "VRC is independent & Morgan Stanley to review solvency."<sup>2453</sup> Beneath that, he wrote "'Accurate & complete' - VRC report"; "'MS assumptions & recommendations fair & reasonable in light of fairness opinion"; and "'corp, pub, bdcst senior mgmt believe company is solvent & can meet debt obligations going fwd."<sup>2454</sup> On a subsequent page, Mr. Grimminck appears to indicate that Mr. Bigelow referred to a "conservative approach from VRC," and several lines below that he states: "MS will be [at] board mtg to answer questions."<sup>2455</sup> Finally, Merrill produced a copy of VRC's draft solvency

---

<sup>2449</sup> Examiner's Sworn Interview of Chandler Bigelow, June 17, 2010, at 241:4-10. Mr. Grenesko did not recall the questions or whether any answers were given. Examiner's Sworn Interview of Donald Grenesko, June 25, 2010, at 143:18-144:20.

<sup>2450</sup> Examiner's Interview of Rajesh Kapadia, June 25, 2010 (hiring and role of Murray Devine).

<sup>2451</sup> Ex. 757 (Handwritten Notes of Thomas Kenny, dated December 17, 2007) (notes from a conference call with Tribune management addressing the Lead Banks' follow-up questions); Ex. 758 (Handwritten Notes of Tony Grimminck, dated December 17, 2007). Mr. Grimminck erroneously wrote the date on his notes as "Mon[day] 12/17/2006." In fact, December 17, 2006, was a Sunday; Mr. Grimminck undoubtedly was referring to Monday, December 17, 2007. At his interview with the Examiner, Mr. Kenny stated that he does not have an independent recollection of the statements from his notes quoted above. Examiner's Sworn Interview of Thomas Kenny, July 9, 2010, at 50:14-51:10.

<sup>2452</sup> Ex. 757 at MD000550A (Handwritten Notes of Thomas Kenny, dated December 17, 2007).

<sup>2453</sup> Ex. 758 at JPM\_00499993 (Handwritten Notes of Tony Grimminck, dated December 17, 2007).

<sup>2454</sup> *Id.* Mr. Grimminck's internal quotation marks appear to indicate what was said by a speaker during the call.

<sup>2455</sup> Ex. 758 at JPM\_00499996 (Handwritten Notes of Tony Grimminck, dated December 17, 2007).

analysis dated for the following day (which Mr. Bigelow circulated in advance of this conference call)<sup>2456</sup> with a handwritten notation at the top of the cover page stating: "Fair and reasonable\— MS believes this as well."<sup>2457</sup>

Given the references to Morgan Stanley in the above-referenced notes from the December 17, 2007 conference call, which the Examiner discovered late in the Investigation and after the completion of most witness interviews, the Examiner's counsel contacted Morgan Stanley's counsel and asked whether anyone from Morgan Stanley was invited to attend the December 17, 2007 conference call or any other call or meeting on or about that date, and whether Morgan Stanley had any comments regarding the notes prepared by JPMCB of that conference call.<sup>2458</sup> Morgan Stanley's counsel responded as follows:<sup>2459</sup>

I am writing on behalf of [Morgan Stanley] in response to your July 12, 2010 email inquiring as to (i) Morgan Stanley's knowledge of a December 17, 2007 conference call or meeting held between Tribune and the [Lead Banks] relating to VRC's solvency opinion, and (ii) Morgan Stanley's understanding of its role in or around December 2007 as it related to providing advice regarding Tribune's solvency.

Mr. Wayne has no recollection of ever being invited to that conference call or meeting, nor was he aware at that time that such a conference call or meeting was going to take place. As such, given that Mr. Wayne was not a participant at the meeting, he cannot confirm the accuracy or substance of the handwritten notes attached to your [e-mail].

---

<sup>2456</sup> Ex. 886 at JPM\_00450061 (Bigelow E-Mail, dated December 17, 2007) (forwarding to the Lead Banks VRC's draft December 18, 2007 solvency analysis for "discuss[ion] with you on our call this afternoon").

<sup>2457</sup> Ex. 859 at ML-TRIB-0009950 (VRC Preliminary Solvency Analysis, dated December 18, 2007).

<sup>2458</sup> Ex. 1043 (Nastasi E-Mail, dated July 12, 2010).

<sup>2459</sup> Ex. 1044 (Letter from Jonathan Polkes, dated July 19, 2010).

**(11) VRC's December 18, 2007 Tribune Board Presentation.**

VRC presented a revised preliminary solvency analysis to the Tribune Board on December 18, 2007, with Mr. Wayne and Mr. Taubman of Morgan Stanley in attendance.<sup>2460</sup> As with VRC's December 4, 2007 presentation, VRC's December 18, 2007 presentation set forth four "Key Assumptions," including "that the Company can refinance guaranteed debt after the expiration of the credit agreements."<sup>2461</sup> Mr. Wayne stated that "VRC walk[ed] through [these] assumptions," but there was no discussion of the basis for the refinancing assumption either during VRC's presentation or otherwise.<sup>2462</sup>

The portion of VRC's December 18, 2007 presentation addressing cash flow available for debt repayments in 2014 and 2015 under both the base case and downside case was essentially the same as what VRC had presented to the Tribune Board on December 4, 2007: under the base case, only \$596 million in cash would be available to cover more than \$6.2 billion in debt repayments scheduled for 2014, and only \$698 million in cash would be available to cover more than \$2 billion in debt repayments scheduled for 2015; under the downside case, only \$181 million in cash would be available to cover \$6.3 billion in scheduled debt repayments scheduled for 2014 and only \$199 million in cash would be available to cover more than \$2 billion in debt repayments scheduled for 2015.<sup>2463</sup> VRC's charts continued to account for

---

<sup>2460</sup> Ex. 11 (Tribune Board Meeting Minutes, dated December 18, 2007); Ex. 738 (VRC Preliminary Solvency Analysis, dated December 18, 2007); Examiner's Sworn Interview of Thomas Wayne, July 2, 2010, at 123:22-124:12.

<sup>2461</sup> Ex. 738 at VRC0109242 (VRC Preliminary Solvency Analysis, dated December 18, 2007).

<sup>2462</sup> Examiner's Sworn Interview of Thomas Wayne, July 2, 2010, at 125:13-126:9; Examiner's Sworn Interview of Paul Taubman, July 1, 2010, at 76:18-22. Nor was it discussed when VRC gave its preliminary solvency presentation to the Tribune Board on December 4, 2007. Examiner's Sworn Interview of Thomas Wayne, July 2, 2010, at 99:12-102:1.

<sup>2463</sup> Ex. 738 at VRC0109247 and VRC0109251 (VRC Preliminary Solvency Analysis, dated December 18, 2007).

anticipated refinancing by including billions of dollars in credits on a line titled "Other Financing Activities."<sup>2464</sup>

The December 18, 2007 Tribune Board minutes reflect that after Mr. Browning and Mr. Rucker reviewed VRC's solvency analysis with the Tribune Board, "[m]anagement confirmed its belief that VRC's analysis and the underlying assumptions and projections [were] reasonable, if not conservative."<sup>2465</sup> The minutes further recite that "[d]iligence questions that had been posed by the banks to VRC and to management were previously made available to the Board," and that "[t]he Board (directly and through its counsel and financial advisors) posed its own questions to VRC and to management and received answers thereto."<sup>2466</sup>

**(12) Tribune Management's December 20, 2007 VRC  
Refinancing Representation Letter.**

Mr. Grenesko signed on behalf of Tribune seven representation letters dated December 20, 2007 and addressed to VRC.<sup>2467</sup> One of the seven letters provided as follows:<sup>2468</sup>

Based upon (i) management's best understanding of the debt and loan capital markets and (ii) management's recent discussions with Morgan Stanley, management believes that it is reasonable and appropriate for VRC to assume that Tribune, in the downside forecast . . . delivered to VRC via email on November 21, 2007 ("Tribune Downside Forecast"), would be able to refinance (i) any outstanding balances of Term Loan B under the Credit Agreement dated May 17, 2007, as amended (the "Credit Agreement"), that mature in 2014 and (ii) any outstanding balances under the Senior Unsecured Interim Loan Agreement to be dated as of the closing date (or any notes issued to refinance such facility) that mature in 2015, in each case, without the need for any asset sales other than those incorporated into the Tribune Downside Forecast.

---

<sup>2464</sup> *Id.* at VRC0109247 (base case, listing a \$6.2 billion credit in 2014 and a \$1.7 billion credit in 2015); *Id.* at VRC0109251 (downside case, listing a \$6.3 billion credit in 2014 and a \$1.7 billion credit in 2015).

<sup>2465</sup> Ex. 11 at TRB0415685 (Tribune Board Meeting Minutes, dated December 18, 2007).

<sup>2466</sup> *Id.*

<sup>2467</sup> Ex. 739 (Representation Letters, dated December 20, 2007).

<sup>2468</sup> *Id.*

The paragraph set forth above is identical to the draft VRC refinancing representation letter as edited by Tribune management on December 3, 2007. Unlike the December 3, 2007 draft, however, the final VRC refinancing representation letter signed by Mr. Grenesko did not contain the two paragraphs discussing leverage ratios. Those two paragraphs appear to have been deleted between December 18, 2007 and December 20, 2007.<sup>2469</sup> Morgan Stanley was not given a copy of Mr. Grenesko's refinancing representation letter referencing discussions with Morgan Stanley.<sup>2470</sup>

### **(13) VRC's December 20, 2007 Solvency Opinion.**

VRC's December 20, 2007 Step Two solvency opinion summarizes Mr. Grenesko's refinancing representation and states as follows:<sup>2471</sup>

A responsible officer of the Company has provided VRC with [a] representation letter that based upon (i) Management's best understanding of the debt and loan capital markets and (ii) Management's recent discussions with Morgan Stanley, Management believes that it is reasonable for VRC to assume that the Company would be able to refinance its debts when they come due in the Downside Case Forecast. VRC has relied upon this representation letter in concluding its Opinion and has assumed that the Company would be able to refinance the New Financing and any other existing indebtedness for borrowed money upon their scheduled maturities without the need for asset sales other than those incorporated into the Downside Case Forecast.

Mr. Grenesko's VRC refinancing representation letter is narrower in scope than the assumption made by VRC in its solvency opinion. Whereas Mr. Grenesko represented only that Tribune "would be able to refinance" outstanding balances due on the Tranche B Facility in 2014

---

<sup>2469</sup> Ex. 759 (Draft Letter from Donald Grenesko to VRC, dated December 20, 2007) (marked up copy changing the date of the letter from December 18, 2007 to December 20, 2007 and deleting the final two paragraphs). *See also* Ex. 760 (Draft Letter from Donald Grenesko to VRC, dated December 18, 2007) (marked up copy identical to management's December 3, 2007 mark-up, with "December 18, 2007" inserted in place of "December [ ], 2007").

<sup>2470</sup> Examiner's Sworn Interview of Paul Taubman, July 1, 2010, at 94:16-95:16; Examiner's Sworn Interview of Thomas Whayne, July 2, 2010, at 138:3-139:22.

<sup>2471</sup> Ex. 728 at TRB0294013 (VRC Step Two Solvency Opinion, dated December 20, 2007).

and on the Bridge Facility in 2015, VRC assumed Tribune "would be able to refinance . . . *any* other existing indebtedness of borrowed money upon [its] scheduled maturit[y]," apparently without regard to whether the debt in question was due in 2014, 2015, or another year altogether.<sup>2472</sup> VRC's Step Two solvency opinion was never provided to Morgan Stanley<sup>2473</sup> or filed with the SEC.<sup>2474</sup>

**(14) The Examiner's Assessment of Tribune Management's VRC Refinancing Representation and VRC's Reliance on Tribune Management's Representation.**

By assuming that Tribune could refinance all of its debts (rather than the subset of its contemplated post-Step Two obligations addressed in Mr. Grenesko's December 20, 2007 VRC refinancing representation letter), VRC accepted as true a proposition that was both untested and inconsistent with what management actually represented. Given this incongruence, and taking into account the observed secondary market discounts to the Step One Debt,<sup>2475</sup> the increased indebtedness that Tribune would incur as a result of the Step Two Transactions, and the

---

<sup>2472</sup> Ex. 728 at TRB0294013 (VRC Step Two Solvency Opinion, dated December 20, 2007) (emphasis added).

<sup>2473</sup> Examiner's Interview of Thomas Whayne, June 11, 2010; Examiner's Sworn Interview of Thomas Whayne, July 2, 2010, at 21:6-24:5; Examiner's Sworn Interview of Paul Taubman, July 1, 2010, at 89:2-90:22.

<sup>2474</sup> At Tribune's Section 341 meeting held after the Petition Date, the U.S. Trustee's representative asked Mr. Bigelow whether the two VRC solvency opinions were publicly filed. Mr. Bigelow replied that the first opinion was publicly filed, but the second was not, stating that "to the best of my knowledge we had no obligation to publicly file the second step of the solvency opinion." Audio Recording of Section 341(a) Meeting of Creditors, January 16, 2009. Because Step One involved the Tender Offer, Tribune included the first VRC solvency opinion in its public filings with the SEC apparently to meet the requirements of the SEC's Schedule TO and Schedule 13E-3. Step Two did not involve a tender offer, and the Examiner's analysis is that there does not appear to be any law or regulation that required Tribune to file VRC's Step Two solvency opinion with the SEC. Separate and apart from Tribune's SEC reporting obligations, the Examiner finds it difficult to reconcile why Tribune apparently never furnished the opinion to Morgan Stanley either before or after it was delivered.

<sup>2475</sup> As part of a presentation made by Morgan Stanley on November 21, 2007 regarding Tribune management's effort to negotiate with its banks to "improve the Step 2 financing," the trading levels of Tribune's Tranche B Facility and Tranche X Facility were presented over the period from May 22, 2007 (approximately when the loans "broke for trading,") through November 14, 2007. The chart indicates that both tranches traded at a discount from par, beginning in June of 2007, hitting a trough in August, after which they began trading within a range of 92 and nearly 100 percent of par. Ex. 761 at TRB0266940 (Morgan Stanley Discussion Materials, dated November 21, 2007).



deterioration of the debt markets generally during the fall and winter of 2007,<sup>2476</sup> the Examiner concludes that VRC's assumption that Tribune would be able to refinance any existing indebtedness for borrowed money without the need for asset sales (other than those incorporated in the downside forecast) was not adequately supported.

The Examiner considered the precedent transaction information provided by Morgan Stanley in response to Mr. Bigelow's request.<sup>2477</sup> Those materials, however, do not support a favorable determination concerning Tribune's prospective ability to refinance its debt. It is an apples-to-oranges comparison to measure the leverage ratios of those *actual* transactions against a hypothetical projection of Tribune's *future* leverage ratios that depends on meeting (unrealistic) projections for the next seven years.<sup>2478</sup> Moreover, before drawing any conclusions about the precedents supplied by Morgan Stanley, any number of factors would require careful consideration, including the comparability of the growth and earnings expectations for the precedent companies versus those of Tribune. On this score, Mr. Whayne's testimony is instructive:<sup>2479</sup>

Q. The only thing that you supplied to management in this regard was comparable transactions after they requested that, is that right?

A. We provided comparable transactions and we updated the multiples that—we updated the publicly traded comparable

---

<sup>2476</sup> See generally William Bassett & Thomas King, Profits and Balance Sheet Developments at U.S. Commercial Banks in 2007, 94 Federal Reserve Bulletin (June 2008).

<sup>2477</sup> Ex. 750 (Williams E-Mail, dated December 3, 2007).

<sup>2478</sup> The conditional nature of this inquiry is clear from the original draft VRC refinancing representation letter, which specified that (a) "Management believes that it is reasonable and appropriate for VRC to assume that . . . Tribune will be able to refinance any Guaranteed Debt . . . that matures in 2014 if the Guaranteed Debt to Covenant EBITDA . . . is 6.95 times and the Covenant EBITDA to Cash Interest Expenses . . . is 1.3 times," and (b) "Management believes that it is reasonable and appropriate for VRC to assume that . . . Tribune will be able to refinance any Guaranteed Debt . . . that matures in 2015 *if* the Guaranteed Debt to Covenant EBITDA . . . is 6.77 times and the Covenant EBITDA to Cash Interest Expenses . . . is 1.3 times." Ex. 752 at VRC0056532 (Draft VRC Refinancing Representation Letter, dated December 2, 2007) (emphasis added).

<sup>2479</sup> Examiner's Sworn Interview of Thomas Whayne, July 2, 2010, at 82:4-83:7.

multiples that we had used as part of our fairness opinion at their request.

Q. And by the time this transaction closed [on] December [20], 2007, what would the validity have been of using those comparable transactions with respect to [refinanceability] of debt in December 2007?

A. Oh, I don't, I don't, I don't think they would have been valid at all.

Q. Why?

A. Well, because those multiples would, would only have been useful as one of a number of analyses to try to validate whether or not the company was actually solvent at that point in time. That's—and that's a snapshot as of that date. It doesn't have anything to do with whether the company would have a liquidity profile going forward and being able to pay off its debt X years down the road.

The more appropriate comparison is Tribune's pro forma leverage ratio at the time of the Step Two Transactions. Three different Tribune leverage ratios are pertinent. The first ratio, 9.2:1, is based on Tribune's November 21, 2007 projections, which indicate pro forma 2007 adjusted EBITDA (EBITDA plus equity investment income plus anticipated 401(k) savings) of approximately \$1.29 billion and total debt of approximately \$11.83 billion. The second ratio, 9.7:1, is based on actual 2007 EBITDA of approximately \$1.32 billion (including the addition of approximately \$100 million of 2007 equity income and \$60 million of anticipated 401(k) savings and the elimination of certain non-recurring items) and total debt of approximately \$12.84 billion. The third ratio, 8.4:1, is based on projected 2008 adjusted EBITDA of approximately \$1.346 billion and total year end 2008 debt of approximately \$11.37 billion. With the exception of the Univision comparison, every company on the list of precedent transactions

supplied by Morgan Stanley had a leverage ratio lower than any of these three actual Tribune leverage ratios—and Univision was an outlier in every sense of the term.<sup>2480</sup>

#### **4. Knowledge and Actions of the Lead Banks and Financial Advisors in Connection with the Step Two Transactions.**

The knowledge and actions of the Lead Banks and Financial Advisors leading up to the Step Two Transactions were informed by the deterioration in performance of the market generally and Tribune in particular, and were largely driven by contractual commitments made in mid-2007. With this context, the discussion below turns to two categories of pertinent financial institution activities at Step Two: (a) the actions of the Lead Banks, and (b) the actions of the Financial Advisors.

##### **a. Backdrop: The Deteriorating Economics of the Tribune Transaction and the Lead Banks' Contractual Commitments.**

Shortly after the June 4, 2007 closing of the Step One Financing, Tribune and the Lead Banks observed substantial changes in the financial markets. On July 17, 2007, Peter Cohen of JPM suggested that Tribune Senior Vice President/Finance and Administration Donald Grenesko and Tribune Treasurer Chandler Bigelow begin participating in weekly updates "on what is happening in the leverage markets, given all the recent news, to give you some of our perspective (being in the middle of it) and share some thoughts on how what is happening may or may not [affect] the second step."<sup>2481</sup> Two days later, JPM forwarded Mr. Grenesko and Mr. Bigelow a "Tribune Market Update" noting, among other things, that "[t]he high yield market reversed

---

<sup>2480</sup> The Univision leveraged buyout is neither a reasonable transaction proxy for purposes of valuing Tribune's business nor evidence of the ability of Tribune to prospectively refinance its debt. Among other differences, Univision (unlike Tribune) saturated the large and growing U.S. Hispanic market (it was, for example, ranked number one in prime time television among adults within this segment), and grew revenues at a compound annual rate of more than 17% (and operating income at more than 15%) from 2000 to 2005 (as compared to Tribune's compound annual revenue growth of approximately 2.2% and operating income growth of 1.8% over the same period). *See* Ex. 762 at 9 and F-5 (Univision 2005 Form 10-K). In addition, Univision, at the time of its leveraged buyout, generated a significant amount of its revenues from its music products and music publishing segment, and had no material traditional newspaper publishing operations. *Id.* at 7-8 and F-5.

<sup>2481</sup> Ex. 1077 (Cohen E-Mail, dated July 17, 2007).

course dramatically over the past three weeks," with a "[s]evere secondary market sell-off" and "severe market pushback" for "[d]eals that have challenged standards of maximum leverage and minimum coverage."<sup>2482</sup> A transaction update included in the Tribune Board materials for July 18, 2007 reflects this negative sentiment and notes its possible effect on Tribune's ability to close the Step Two Transactions.<sup>2483</sup>

There has been increasing speculation in the market regarding the possibility that the merger will not be consummated on its current terms. Following the release of our Period 5 results, several sell-side analysts expressed some concern as to whether the second step of the transaction will close due to uncertainties relating to the FCC approval process and our ability to finance the second step, as interest rates have begun to rise and credit spreads have widened. . . .

The Company is preparing for the possibility that general market conditions may have an adverse effect on a successful syndication of our second step financing. . . . [T]ighter market conditions and our current operating results could limit our access to or increase the cost of the public bond financing.

These market changes, coupled with Tribune's recent declining operating performance, led one banker to report to JPM Vice Chairman James Lee in July 2007 that JPM was "totally underwater on this underwrite [and] the deal is now underequitized and underpriced."<sup>2484</sup> Bankers at other Lead Banks expressed similar concerns about the impact of market changes and Tribune's performance:

---

<sup>2482</sup> Ex. 992 at TRB185635-37 (Tribune Market Update, dated July 19, 2007). *See also* Examiner's Sworn Interview of Chandler Bigelow, June 17, 2010, at 168:16-21 ("[W]e were constantly talking to the banks. We were giving the banks our information. We had monthly calls with the banks about our financial results. Yeah, we were in constant communication with the banks all the time.").

<sup>2483</sup> Ex. 723 at TRB-UR-0414584.03-84.04 (Tribune Board Meeting Materials, dated July 18, 2007).

<sup>2484</sup> Ex. 1078 at JPM\_00269777 (Kapadia E-Mail, dated July 26, 2007). This prompted Mr. Lee to meet with Mr. Zell and convey "all the issues around selling the remainder of his acquisition debt . . . ie it couldnt [sic] be done." *Id.* at JPM\_00269776.

- At Merrill (where one banker had previously described Tribune as "a melting ice cube but not one that disappears right away"<sup>2485</sup>), a banker wrote in late June 2007 that it was "too difficult to really put a confidence level" on the likelihood of the Step Two Transactions closing, in part because "the company's fundamental performance likely needs to be better in the last half of the year than it has been in the first."<sup>2486</sup>
- Citigroup's Julie Persily testified during her sworn interview with the Examiner that "[it] occurred to me that this company was in more trouble than we thought it was when we first signed the deal. We'd be stupid not to know that . . . we were not going to be able to sell the second step debt."<sup>2487</sup>
- The day after a meeting between BAS, Tribune, and EGI to "discuss second quarter results, current business trends and the outlook for the remainder of 2007, as well as Step-2 transaction timing and process,"<sup>2488</sup> a BAS banker told his deal team that syndicating the Step Two Financing likely would require reducing BAS's fees to zero "[g]iven the volatility in the leveraged finance market."<sup>2489</sup>

Notwithstanding the challenges of a softening market and Tribune's operating performance, at Step Two Tribune was favorably positioned vis-à-vis the Lead Banks because Tribune had "fully committed second step financing from [its] four lead banks comprised of an additional \$2.1 billion of Term Loan B . . . \$2 billion of publicly issued high-yield bonds," and "[a] fully committed bridge facility is in place in the event that [it is] unable or elect[s] not to

---

<sup>2485</sup> Ex. 357 at ML-TRIB-0893576 (Browning E-Mail, dated May 18, 2007).

<sup>2486</sup> Ex. 926 at ML-TRIB-0580949 (O'Grady E-Mail, dated June 28, 2007).

<sup>2487</sup> Examiner's Sworn Interview of Julie Persily, July 8, 2010, at 76:9-14.

<sup>2488</sup> Ex. 927 at 1 (BAS Leveraged Finance Committee Update Memo, dated August 3, 2007).

<sup>2489</sup> Ex. 928 at BOA-TRB-0012808 (Hagel E-Mail, dated July 26, 2007).

issue the public bonds."<sup>2490</sup> In other words, subject only to satisfaction of the closing conditions, the Lead Banks were contractually obligated to advance additional funds on the Step Two Financing Closing Date. When the Lead Banks ultimately funded on the Step Two Financing Closing Date, at least some were well aware at the time that they were paying the equivalent of one dollar "to get back 92 cents."<sup>2491</sup>

To the extent the Lead Banks viewed this circumstance as a predicament, it was one of their own making. Once the Lead Banks signed the Step Two Commitment Letter in April 2007, they were obligated (subject to the closing conditions) to lend specified amounts up to 13 months later, without regard to intervening macroeconomic deterioration or the ability of the Lead Banks to successfully syndicate the debt.<sup>2492</sup> JPM Chief Executive Officer Jamie Dimon explained that a lending institution's assumption of the risk of changed economic circumstances between initial commitment and closing is part of the borrower's bargain when it obtains a funding commitment rather than rely on accessing the capital markets when money is needed: "That's like asking if

---

<sup>2490</sup> Ex. 723 at TRB-UR-0414584.03 (Tribune Board Meeting Materials, dated July 18, 2007).

<sup>2491</sup> Examiner's Interview of Michael Costa, June 4, 2010. *See also* Ex. 761 at TRB0266940 (Morgan Stanley Discussion Materials, dated November 21, 2007) (noting that Tranche B Facility bonds were trading at 91 cents on the dollar, and had previously been trading even lower). JPM's Rajesh Kapadia similarly told the Examiner that it was "obvious" on the Step Two Financing Closing Date that it would have been better for the Lead Banks as an economic matter if they did not have to go through with the financing, as they were required to immediately mark the debt to market (and thereby incur a loss). Examiner's Interview of Rajesh Kapadia, June 25, 2010. *See also* Examiner's Sworn Interview of Todd Kaplan, July 8, 2010, at 85:13-15 ("I think it's fair to say it would have been better for us to not close economically, absolutely."); Examiner's Sworn Interview of Julie Persily, July 8, 2010, at 76:8-16 (At the end of 2007, "we were not going to be able to sell the second step debt. We were going to have to own it."); Examiner's Sworn Interview of Daniel Petrik, July 8, 2010, at 141:15-142:8 ("[W]e knew we were obligated under certain circumstances given the commitment we signed, [but] it wasn't like we were looking forward to it. . . . I know that I would have been . . . thankful [if Step 2 did not happen].").

<sup>2492</sup> Ex. 1010 at 5 (Step Two Commitment Letter) (incorporating definition of "Company Material Adverse Effect" that carves out changes in general economic conditions or the industries in which Tribune operated from the definition of a "Company Material Adverse Effect" sufficient to terminate the Lead Banks' commitment, to the extent such economic or industry conditions did not disproportionately impact Tribune, and further providing that completion of the syndication of the Step Two Financing was not a condition to the commitments of the Lead Banks); Ex. 179 at § 1.01 (definition of "Material Adverse Effect") (Credit Agreement); Ex. 151 at § 3.1 (definition of "Company Material Adverse Effect") (Merger Agreement).

the weather was bad, yes by that time the weather was bad. [But when] we sign the binding commitment, it's a binding commitment. That's . . . why you have a bank."<sup>2493</sup>

Two aspects of the Step Two Financing are particularly important in assessing the Lead Banks' activities and due diligence prior to the Step Two Financing Closing Date: the market flex provisions in the Step Two Fee Letter (which allowed certain unilateral changes by the Lead Banks to the terms of the Step Two Financing) and the closing conditions (which had to be satisfied before the Lead Banks had any obligation to fund). As discussed in turn below, the market flex provisions provided the backdrop against which the Lead Banks approached Tribune to discuss modifications to the Step Two Financing (with only partial success), and the closing conditions—most notably, the solvency requirement—drove their due diligence.

**(1) Contractual "Market Flex" and Consensual Modifications to the Step Two Financing.**

The Step Two Fee Letter gave the Lead Banks a unilateral right to make limited modifications to the Step Two Financing if necessary to achieve a successful syndication.<sup>2494</sup> These permissible changes included increasing certain interest rate margins up to 50 basis points, reallocating a portion of the Incremental Credit Agreement Facility to the Bridge Facility, and giving second-lien status to senior notes issued in lieu of the Bridge Facility.<sup>2495</sup> After the closing of Step One, the Lead Banks did not view this flexibility as sufficient given the market's

---

<sup>2493</sup> Examiner's Interview of Jamie Dimon, June 25, 2010. *See also* Ex. 957 at JPM\_00051021 (Deutsche Bank Research Report, dated July 1, 2007) ("[W]e believe that the Tribune going-private transaction will complete. There may be some unhappy lenders in the end [but our] understanding is that Zell/ESOP have secured financing via commitment letter, which essentially locks in financing to complete the deal. . . . [O]ur impression is that the agreements are pretty 'tight.'"); Examiner's Sworn Interview of Julie Persily, July 8, 2010, at 58:17-59:1 ("In this day and age [a seller] wouldn't agree to sell a company unless they knew the capital was there. You couldn't sell the bonds in February for a deal that wasn't going to close for many, many months. You had to have a bank stand by it and say if the bonds don't sell we'll fund. So we did that and then we sold that funding agreement to the bond market.").

<sup>2494</sup> *See* Report at § III.D.9.c.

<sup>2495</sup> Ex. 176 at § 3 (Step Two Fee Letter).

and Tribune's performance, and they approached Tribune in October and November 2007 to discuss recalibrating the terms of the Step Two Financing to facilitate syndication.<sup>2496</sup> JPM's Rajesh Kapadia summarized some of those discussions in an e-mail to James Lee of JPM:<sup>2497</sup>

[We] just left meeting with Tribune and Nils Larsen in Chicago to lay out the changes to the Tribune financing (summarized below) that we discussed with you Monday. I know you said you may want to call Sam.

Meeting went well, Tribune mgt is focused on how they convince their Board of the revised terms. *We explained that we are still losing money and that the board should want a market clearing deal and not leave a levered company with its underwriters stuffed. . . .*

As a reminder, the proposed changes are: (a) reducing debt by \$700 to \$3.5BN from cash on hand and FCF; (b) commit to selling an additional \$1.5bn in assets over next three years; (c) apply the increased rate to the bonds that would have resulted from exercising the flex to shift \$1.4bn from loans to bonds (d) additional PIK rate of 300bps on \$2.1bn bonds; (e) reduce bond maturity from 8 to 7 years.

Separately we talked to Nils about Zell buying \$500mm of the bonds/bridge (this did not come up in the Tribune meeting).

When asked why Tribune or Samuel Zell would consider modifications to the Step Two Financing beyond the limited flex provisions to which the Lead Banks were contractually entitled, Brit Bartter of JPM explained that it is very much in a borrower's interest to have this type of debt in the hands of long-term institutional investors, rather than staying on the books of the Lead Banks.<sup>2498</sup>

---

<sup>2496</sup> Examiner's Interview of Brit Bartter, June 16, 2010; Ex. 844 (Kapadia E-Mail, dated October 18, 2007).

<sup>2497</sup> Ex. 844 (Kapadia E-Mail, dated October 18, 2007) (emphasis added).

<sup>2498</sup> Examiner's Interview of Brit Bartter, June 16, 2010. Todd Kaplan of Merrill has a slightly different recollection, suggesting during his sworn interview with the Examiner that *Tribune* first raised restructuring because "they really did not want us to exercise [the flex] option." Examiner's Sworn Interview of Todd Kaplan, July 8, 2010 at 45:10-11. *See also id.* at 45:16-21 ("Q. [W]hy did the banks want to restructure the debt at all? A. We didn't start with wanting to restructure the debt. We were responding to a company request not to exercise the contractual option we already had."). Mr. Kaplan's recollection in this regard does not appear to be consistent with the contemporaneous documentary record, including an e-mail Mr. Kaplan wrote in



Nonetheless, on November 5, 2007, after considering "the Company's and the Board's legal obligations under the merger agreement and the banks' legal obligations under the credit agreement," the Tribune Board rejected the restructuring proposal made by the Lead Banks.<sup>2499</sup> Todd Kaplan of Merrill reported the Tribune Board's decision in an internal e-mail:<sup>2500</sup>

[O]ur proposed changes to the financing were reviewed by the board and rejected for reason I'd be happy to review live – I asked Chandler and Crane if there was a counterproposal – for today, there is not, but I've encouraged Chandler and Crane to go back and think about a redesign of the financing that, from their standpoint, would make sense. . . .

Michael Costa of Merrill responded:<sup>2501</sup>

We are clearly dealing with an organization at all levels unable to come to a decision. We should make an institutional judgment as to whether closing into existing papers and preserving flexibility to restructure when the new board is in place is in our interests. We should also seek direct dialogue with board since mgmt seems incapable of driving a decision.

On November 14, 2007, Tribune offered a counterproposal for modifying certain of the financial terms of the Step Two Financing. An internal BofA e-mail summarized the counterproposal.<sup>2502</sup>

1. Reduce the amount of Bonds by \$500MM for Step Two from \$2.1BN to \$1.6BN primarily due to IRS settlement proceeds of \$350MM received in October.
2. Waive the 20 day marketing period that the Underwriters have to market the TLB and Bridge/Bonds after receiving FCC approval.

---

August 2007 stating that he was "trying to conceptualize what we can ask for in terms of making the 2nd step better"; "[g]iven the challenge of the credit," Mr. Kaplan suggested a possible arrangement whereby the principal of the debt (not the interest) would increase in stress situations "to improve noteholders claim in a reorg type analysis." Ex. 868 (Kaplan E-Mail, dated August 11, 2007).

<sup>2499</sup> Ex. 726 at 1-2 (Tribune Board Meeting Minutes, dated November 5, 2007).

<sup>2500</sup> Ex. 1054 at ML-TRIB-0613214 (Kaplan E-Mail, dated November 7, 2007).

<sup>2501</sup> *Id.* at ML-TRIB-0613213.

<sup>2502</sup> Ex. 930 at BOA-TRB-0007791 (Petrik E-Mail, dated November 14, 2007).

3. Eliminate our ability to flex the \$1.4BN to Bonds from the TLB. Therefore, TLB would be \$2.1BN and Bridge/Bonds at \$1.6BN.
4. Increase the cap on the Bonds from 12.5% to 14.5% (14% cash and 0.5% PIK).

On November 21, 2007, Tribune and the Lead Banks reached an agreement to modify the Step Two Financing. The terms were described in an internal Merrill e-mail:<sup>2503</sup>

[B]anks agree that upon the near-term receipt of the completed offering memorandum (targeted for next few days), the information requirement for the marketing period is satisfied. . . .

[C]ompany states intent to use \$500 mm of excess cash flow + settlement proceeds from tax case . . . to reduce funding in Step 2

[B]anks agree to forego structural flex of \$1.4 b of B loan to bridge loan/notes.

[T]he cap rate on the notes is increased to 15.25%, of which 14.5% can be in cash (vs current cap of 12.5%).

Tribune and the Lead Banks memorialized their agreement to modify the Step Two Financing via a side letter that effectively superseded the market flex provisions in the Step Two Fee Letter with an agreement by Tribune to borrow less money at Step Two and to pay higher interest rates on a portion of the Step Two Debt.<sup>2504</sup> Mr. FitzSimons explained during his sworn interview with the Examiner that Tribune agreed to borrow less money because it received an unexpected tax settlement that reduced its financing needs.<sup>2505</sup> Mr. Zell similarly characterized Tribune's decision to borrow less money as a concession that would be cost-free to Tribune yet nonetheless be of value to the Lead Banks.<sup>2506</sup>

---

<sup>2503</sup> Ex. 988 at ML-TRIB-0405454 (Costa E-Mail, dated November 21, 2007).

<sup>2504</sup> Ex. 177 (Flex Side Letter).

<sup>2505</sup> Examiner's Sworn Interview of Dennis FitzSimons, June 25, 2010, at 71:10-72:17.

<sup>2506</sup> Examiner's Interview of Samuel Zell, June 14, 2010.

## **(2) Centrality of the Solvency Closing Condition at Step Two.**

The Lead Banks' obligation to fund Step Two was contingent on satisfaction of the contractual closing conditions under the Credit Agreement (with respect to the closing of the Incremental Credit Agreement Facility) and the Bridge Credit Agreement. The Credit Agreement (with respect to the closing of the Incremental Credit Agreement Facility) and the Bridge Credit Agreement each required Tribune's Chief Financial Officer to certify that "as of the [Step Two Financing] Closing Date, immediately after giving effect to the [Step Two] Transactions, [Tribune] is Solvent."<sup>2507</sup> In addition, both the Credit Agreement and the Bridge Credit Agreement contain representations and warranties of "Solvency," separate and apart from the Chief Financial Officer's certification.<sup>2508</sup> Although the solvency *certificate* delivered on the Step Two Financing Closing Date<sup>2509</sup> was separate from the solvency *opinion* required under the Merger Agreement,<sup>2510</sup> the record is clear that Tribune's Chief Financial Officer would not have issued the former had VRC not issued the latter.<sup>2511</sup> Accordingly, as a practical matter, a favorable solvency opinion from VRC or another independent firm effectively was a closing condition to the Step Two Financing.<sup>2512</sup>

---

<sup>2507</sup> Ex. 179 at §§ 2.17(b)(ii)(A) and 4.01(l)(ii) (Credit Agreement); Ex. 175 at § 3.01(b)(i) and (b)(iv)(A) (Bridge Credit Agreement). Although the Step Two Commitment Letter did not expressly condition the Lead Banks' Step Two funding obligations under that letter on Tribune's solvency, those obligations were conditioned on the negotiation, execution, and delivery of definitive Step Two Financing Documents, in customary form, presumably meaning that the definitive Step Two Financing Documents would include a solvency requirement mirroring the solvency requirement embodied in the Credit Agreement entered into by the Lead Banks at Step One. Ex. 1010 at 3 and 5 (Step Two Commitment Letter).

<sup>2508</sup> Ex. 179 at § 4.01(l)(ii) (Credit Agreement); Ex. 175 at § 3.01(b)(i) and (b)(iv)(A) (Bridge Credit Agreement).

<sup>2509</sup> Ex. 708 (Step Two Solvency Certificate)

<sup>2510</sup> Ex. 151 at § 6.2(e) (Merger Agreement).

<sup>2511</sup> Examiner's Sworn Interview of Donald Grenesko, June 25, 2010, at 33:3-34:11; Examiner's Sworn Interview of Chandler Bigelow, June 17, 2010, at 135:11-136:12.

<sup>2512</sup> Indeed, the form of Step One solvency certificate attached as an exhibit to the Credit Agreement specifically references the Chief Financial Officer's reliance on VRC's solvency opinion. Ex. 187 (Form of Credit Agreement Solvency Certificate) ("I have reviewed such information as I have deemed relevant for purposes of

The definitions of "Solvent" and "Solvency" in the Credit Agreement and the Bridge Credit Agreement are non-standard because they limit the "fair value" and "present fair saleable value" components of the definition of "Solvency" at Step Two to an assessment made by reference only to those transactions "having a similar structure" to the S-Corporation/ESOP structure.<sup>2513</sup> This same limitation is built into VRC's analysis of Tribune's solvency at Step Two.<sup>2514</sup> As discussed elsewhere in the Report,<sup>2515</sup> the Examiner concludes that this redefinition of solvency is not appropriate for purposes of determining whether transfers made, and obligations incurred, in connection the Leveraged ESOP Transactions may be avoided under the Bankruptcy Code. Accordingly, because of the restrictive definitions of "Solvent" and "Solvency" in the Credit Agreement and Bridge Credit Agreement, Tribune could conceivably be "Solvent" for purposes of the condition precedent to the Lead Banks' contractual obligations, but nevertheless "insolvent" under the Bankruptcy Code.<sup>2516</sup>

---

this certification, including the opinion of Valuation Research Corporation . . ."). The solvency certificate ultimately signed by Donald Grenesko on the Step Two Financing Closing Date noted that Mr. Grenesko reviewed and relied on the opinion of VRC, dated as of December 20, 2007, for purposes of the solvency certificate. Ex. 708 (Step Two Solvency Certificate).

<sup>2513</sup> Ex. 179 at § 1.01 (definition of "Solvent" and "Solvency") (Credit Agreement); Ex. 175 at § 1.01 (definition of "Solvent" and "Solvency") (Bridge Credit Agreement).

<sup>2514</sup> Ex. 728 at TRB0294008 (VRC Step Two Solvency Opinion, dated December 20, 2007) (defining "Fair Value" and "Present Fair Saleable Value" by reference to acquiring entities "having structures similar to the structure contemplated in the Transactions by the subject entity (an S-Corporation, owned entirely by an ESOP, which receives favorable federal income tax treatment), or another structure resulting in equivalent favorable federal income tax treatment to the Company").

<sup>2515</sup> See Report at § IV.B.5.d.(10).

<sup>2516</sup> At least certain of the Lead Banks appear to have considered this possibility. See Examiner's Sworn Interview of Daniel Petrik, July 8, 2010, at 122:4-20 ("Q: What were the internal discussions about the propriety of [VRC] including the discounted cash flow of the tax benefits [in its solvency assessment]? A: It was -- it is not a traditional value that we would -- that I usually look at. . . . I don't do [a] solvency analysis when I am trying to write an approval document to determine whether I want to [extend credit but] I do look at the cash flow related to their ability to service debt. I do know that the tax benefit . . . improve[s] their cash flow. Whether that net present value of that discounted cash flow should be included . . . in a solvency opinion was just a question that we all tried to get our hands around. "); Ex. 931 (Tuvlin E-Mail, dated December 7, 2007) (Merrill banker questioning whether it is "fair to modify the Fair Saleable Value to assume a buyer has a similar structure as the S-Corp owned entirely by an ESOP"); Examiner's Sworn Interview of Julie Persily, July 8, 2010, at 195:1-11 ("Q: Were you concerned at the time that these tax savings were only available to this company in this structure and that if you sold these assets to someone else or the company had to be broken up

Given the deteriorations in market conditions and Tribune's performance, and in light of the limiting language in the Credit Agreement's (with respect to the closing of the Incremental Credit Agreement Facility) and the Bridge Credit Agreement's material adverse effect clauses,<sup>2517</sup> the solvency requirement was the most logical point for the Lead Banks to "push" if they were trying to avoid closing the Step Two Transactions. A draft JPM internal analysis from September 2007 illustrates why the solvency requirement was more prone to challenge than the requirement of no material adverse effect.<sup>2518</sup> Under the heading "Material Adverse Effect," the analysis states:<sup>2519</sup>

The definition of MAE contains "disproportionate" language, essentially dictating that a MAE could only be claimed if the Company significantly underperforms its industry and geographic peers.

JPMorgan deal team's peer analysis indicates that although Tribune's publishing segment has underperformed its peers in the recent quarters, the entire industry is experiencing very difficult operating environment and deteriorating performance.

Under the heading "Solvency Opinion," by contrast, the analysis states: "JPMorgan deal team's DCF and sum-of-the-parts analysis based on revised July projection[s] indicate that the current valuation of Tribune is approximately \$[10] to \$[13] billion, potentially failing the solvency tests (*i.e.*, debt amount exceeds the value of Borrower)."<sup>2520</sup> Although this document is

---

because it couldn't pay its debts that those tax savings weren't real value to some third party? A: Yeah, I was concerned about that, but our M & A guys told me that they believed there were ways they could sell certain of the assets that would preserve the tax value.").

<sup>2517</sup> Both the Credit Agreement's definition of "Material Adverse Effect" and the Bridge Credit Agreement's definition of "Material Adverse Effect" cross-reference the definition of "Company Material Adverse Effect" in the Merger Agreement. Ex. 179 at § 1.01 (definition of "Material Adverse Effect") (Credit Agreement); Ex. 175 at § 1.01 (definition of "Material Adverse Effect") (Bridge Credit Agreement); Ex. 151 at § 3.1 (definition of "Company Material Adverse Effect") (Merger Agreement).

<sup>2518</sup> Ex. 1036 (Tribune Company Financing Memo, dated September 10, 2007).

<sup>2519</sup> *Id.* at JPM\_00504332.

<sup>2520</sup> *Id.* An earlier draft of this same document, dated "September [ ], 2007," contains the same "\$[10] to \$[13] billion" bracketed value. Ex. 958 (Tribune Company Financing Memo, dated September 2007). What appears

a draft (the valuations are bracketed and thus apparently preliminary and subject to change), the same document's "Summary of Public Research" cites Lehman and Standard & Poor's reports (dated August 14, 2007 and August 22, 2007, respectively) that appear to buttress the JPM deal team's evident suspicion that insolvency was a possibility.<sup>2521</sup>

At least some members of Tribune's management recognized that the Lead Banks would focus very carefully on the solvency requirement. Crane Kenney (Tribune's General Counsel at the time) explained during his sworn interview with the Examiner:<sup>2522</sup>

[A]fter . . . we had signed up the deal with Zell and had obtained all the financing . . . from there until the end . . . it should have been just procedural . . . primarily the issue was getting the FCC's approval. [O]nce you had the banks committed and locked up and Sam committed and locked up and the tender finished, from there to the finish line . . . it should have been procedural and would have been procedural I think until the banks started getting nervous about the commitments they had made. . . .

The solvency opinion became this issue because the banks I think probably reviewed the credit agreement and said: "This thing's ironclad. The only hope we have that we don't have to fund these loans that we no longer want to fund is that we can somehow [prevent the issuance of a solvency certificate]. . . ."

I think they thought they'd take a shot at . . . solvency. . . . I think they were trying to get out of their obligations by trying to squeeze the solvency certificate.

Solvency also was a logical focus because at least certain of the Lead Banks realized they could not fund the Step Two Transactions if doing so would render Tribune insolvent.

Citigroup's Julie Persily explained:<sup>2523</sup>

---

to be a portion of a more final document reaches the same conclusion without using specific numbers: "JPMorgan deal team's analysis indicates that the Company will potentially fail the solvency tests pro forma for Step 2." Ex. 1034 (JPM Undated Discussion Points).

<sup>2521</sup> The Lehman report is summarized as warning that "Tribune is significantly over-levered after Step 1 and should not incur any additional debt." Ex. 1036 at JPM\_00504332 (Tribune Company Financing Memo, dated September 10, 2007). The Standard & Poor's report is summarized as concluding that "Debt other than Credit Facilities have very low recovery of 0% to 10%." *Id.*

<sup>2522</sup> Examiner's Sworn Interview of Crane Kenney, July 8, 2010, at 72:5-74:1.

[T]here were two things going on here. On the one hand the market had completely collapsed and we knew that if we funded this we were going to lose money, but separately the company's performance was deteriorating and we didn't want to fund the second stage of a transaction and cause the company's insolvency by doing so.

BofA's Daniel Petrik concurred:<sup>2524</sup>

Bank of America and the other underwriters were [asking about] the solvency of this company . . . to make sure that . . . we weren't doing something that was inappropriate based on our regulatory requirements [concerning] lending to insolvent companies. . . . There are definitely regulators that would criticize the banks for lending to an insolvent company. And there are probably legal ramifications of lending to insolvent companies. And I am supposed to be a fiduciary to my shareholders and not lend to insolvent companies.

A Merrill banker aptly summarized the situation as he welcomed a new member to the team in August 2007: "We will have a bit of work to do as the second-step financing for the Zell buyout moves closer to execution. Lots of focus internally because we have a sizable [sic] commitment and the business is underperforming."<sup>2525</sup>

**b. Lead Banks at Step Two.**

The Lead Banks undertook solvency-related diligence jointly and individually in connection with Step Two. Their joint activities included propounding due diligence questions to Tribune's management and consulting (through counsel) a solvency expert to assist in evaluating VRC's work. These joint activities (that largely framed each individual institution's internal analyses of Tribune's solvency) are discussed below, followed by separate discussions of institution-specific analyses and due diligence. Collectively, these analyses suggest that the Lead

---

<sup>2523</sup> Examiner's Sworn Interview of Julie Persily, July 8, 2010, at 166:14-21.

<sup>2524</sup> Examiner's Sworn Interview of Daniel Petrik, July 8, 2010, at 126:20-127:17.

<sup>2525</sup> Ex. 932 (Harrison E-Mail, dated August 17, 2007).

Banks were aware of the significant possibility that Tribune would be rendered insolvent by the consummation of Step Two.

**(1) Joint Due Diligence.**

On August 23, 2007, the Lead Banks jointly sent Tribune a five-page due diligence outline.<sup>2526</sup> In addition to operational information about Tribune's strategy, markets, and business lines, the Lead Banks sought detailed financial information including:<sup>2527</sup>

- "Overview of 5-year operating model—longer-term expectations,"
- "Quarterly projections through 2009, annually thereafter,"
- "Outline [of] significant differences between the new forecasts and forecasts provided in April 2007,"
- "Rationale for key corporate level operating assumptions and financial drivers, e.g., corporate G&A, etc.,"
- "Rationale for key Publishing segment assumptions for 2H 2007 and 5-year operating model,"
- "[M]arket-by-market . . . quarterly projections through 2009, annually thereafter," and
- "Rationale for key Digital/Interactive segment assumptions for 2H 2007 and 5-year operating model (including quarterly projections through 2009)."

On September 20, 2007, Tribune sent the Lead Banks a five-year consolidated model that included downside scenarios "prepared by Tribune solely in response to your requests."<sup>2528</sup> Mr. Bigelow's cover e-mail noted that "[t]he downside scenarios in the model are not sensitivity cases endorsed or adopted by Tribune management" and "are not to be disclosed to any other

---

<sup>2526</sup> Ex. 998 (Harrison E-Mail, dated August 23, 2007).

<sup>2527</sup> *Id.* at ML-TRIB-0582684-88.

<sup>2528</sup> Ex. 999 (Lewicki E-Mail, dated September 20, 2007). *See also* Ex. 938 (Kurmaniak E-Mail, dated September 14, 2007) (forwarding Chandler Bigelow's e-mail in which he forwarded an earlier version to Citigroup's Rosanne Kurmaniak, who "offer[ed] to help [Tribune] with the preparation of our financial model").



person or otherwise used in connection with the syndication or marketing of the second step financing."<sup>2529</sup> These downside scenarios included, among other things, "a sensitivity case [that] reflects the assumptions made by Craig Huber of Lehman Brothers in his research report dated August 14, 2007"<sup>2530</sup>—the same research report that JPM's internal memorandum summarized as warning that "Tribune is significantly over-levered after Step 1 and should not incur any additional debt."<sup>2531</sup> Mr. Bigelow testified during his sworn interview with the Examiner that Tribune used Mr. Huber's projections in preparing a stress case because Mr. Huber was the most pessimistic of the analysts covering Tribune.<sup>2532</sup>

In late September 2007, the Lead Banks jointly decided to engage Murray Devine, a valuation advisory firm, to assist in the Lead Banks' due diligence concerning Tribune's solvency.<sup>2533</sup> Arrangements were made through the Lead Banks' law firm, Cahill Gordon & Reindel LLP, for the express purpose of affording attorney-client and/or work product protection to the Lead Banks' interactions with Murray Devine.<sup>2534</sup> The Lead Banks provided Murray Devine with VRC's Step One solvency analysis and Tribune's most recent financial model,<sup>2535</sup>

---

<sup>2529</sup> Ex. 999 (Lewicki E-Mail, dated September 20, 2007).

<sup>2530</sup> *Id.*

<sup>2531</sup> Ex. 1036 at JPM\_00504332 (Tribune Company Financing Memo, dated September 10, 2007).

<sup>2532</sup> Examiner's Sworn Interview of Chandler Bigelow, June 17, 2010, at 153:17-21 ("Craig Huber was out there with a model, very pessimistic, and we thought, hey, one of the most effective ways to really stress test the business is let's take Craig's numbers.").

<sup>2533</sup> Ex. 969 (Murray Devine Engagement Letter, dated October 1, 2007); Ex. 974 (Kenny E-Mail, dated October 2, 2007) ("Raj from JPM called and would like to have a call with us on Thursday or Friday morning with a smaller group. He specifically wants our input on the VRC opinion and presentation and to educate them on valuation methods and how they apply in solvency opinions. He mentioned discount rate calculations[,] the weightings of methods, etc.").

<sup>2534</sup> Examiner's Interview of Rajesh Kapadia, June 25, 2010.

<sup>2535</sup> Ex. 274 (VRC Solvency Opinion Analysis, dated May 9, 2007); Ex. 990 (Tribune Company Model, dated September 30, 2007).

and later, VRC's Step Two presentations to the Tribune Board.<sup>2536</sup> Although Murray Devine evaluated these materials and assisted the Lead Banks in formulating questions concerning solvency, Murray Devine was not asked to (and did not) render an opinion as to whether Tribune was solvent. Instead, as set out in its engagement letter, Murray Devine was retained to provide guidance "as to the methodologies and analyses which may be used by *another* firm in preparing a solvency opinion . . . in connection with the Transaction."<sup>2537</sup>

The Examiner asked representatives of each of the Lead Banks whether they asked Murray Devine to assess Tribune's solvency. All of the Lead Banks agreed that Murray Devine was not asked to assess Tribune's solvency, but rather was retained to assist the Lead Banks in understanding VRC's solvency analysis. JPM's Rajesh Kapadia explained that the Lead Banks "needed to get smarter and . . . educated around the solvency process," but did not want or need a de novo assessment of Tribune's solvency because (according to Mr. Kapadia) the condition precedent to the Lead Banks' obligations was the Chief Financial Officer's certification of solvency—not the Lead Banks' own assessment of solvency.<sup>2538</sup> Todd Kaplan of Merrill testified that "Murray Devine was asked to give us background as to how . . . solvency opinions were developed and rendered," not to actually render a solvency opinion itself.<sup>2539</sup> Similarly, when Citigroup's Julie Persily was asked whether Citigroup "ask[ed] Murray Devine to advise

---

<sup>2536</sup> Ex. 1030 (Schaffzin E-Mail, dated December 7, 2007) (forwarding VRC's December 4, 2007 presentation); Ex. 738 (VRC Preliminary Solvency Analysis, dated December 18, 2007); Ex. 886 (Schaffzin E-Mail, dated December 17, 2007).

<sup>2537</sup> Ex. 969 at 1 (Murray Devine Engagement Letter, dated October 1, 2007) (emphasis added). *See also* Ex. 970 (Murray Devine Time Records) (reflecting the relatively narrow scope of work performed by Murray Devine).

<sup>2538</sup> Examiner's Interview of Rajesh Kapadia, June 25, 2010.

<sup>2539</sup> Examiner's Sworn Interview of Todd Kaplan, July 8, 2010, at 101:13-102:20. *See also id.* at 97:17-21 ("Murray Devine was brought in as an expert in the field of delivering solvency opinions, and that expertise was our attempt to learn more about how solvency opinions were developed and rendered."); *id.* at 104:2-105:11 ("[I]f we as a lending group in the August, September, October time frame had decided gee, it would be nice to have a solvency opinion, that was too late [because] we didn't have any ability to garner access to the company for a solvency expert to render an opinion.").

you whether the second stage closing would render Tribune insolvent," she responded: "We didn't ask the question that way. . . . [W]e asked how do you develop a solvency opinion, what do you look at?"<sup>2540</sup> Daniel Petrik of BofA explained "that [the Lead Banks] discussed this internally and viewed that we did not need another solvency opinion, but we wanted to . . . understand [VRC's] solvency opinion."<sup>2541</sup>

Tribune hosted a Lead Bank due diligence session on October 1, 2007.<sup>2542</sup> The Lead Banks attended with Murray Devine, and also met as a group (without Tribune) to discuss the session.<sup>2543</sup> Tribune's agenda for the session included modeling assumptions, operating plan sensitivities, and capital planning.<sup>2544</sup> Fifty-eight attendees were expected, including Tribune's senior management, representatives from key Tribune business units, EGI, and the Lead Banks.<sup>2545</sup> In connection with the diligence session, Tribune provided the Lead Banks with its finalized five-year projections, which included a management downside case, management base case, and management upside case.<sup>2546</sup>

The Lead Banks sent follow-up diligence questions on October 3, 2007 and November 1, 2007.<sup>2547</sup> With a particular focus on Tribune's financial projections, the Lead Banks asked management to "[d]iscuss the process of preparing the projection models" and to provide

---

<sup>2540</sup> Examiner's Sworn Interview of Julie Persily, July 8, 2010, at 167:4-13.

<sup>2541</sup> Examiner's Sworn Interview of Daniel Petrik, July 8, 2010, at 146:15-18. *See also id.* at 145:5-8 ("[T]he underwriters talked about whether we need someone to help us understand, someone that would be more of an expert to help us understand VRC's work.").

<sup>2542</sup> Ex. 1079 (Chen E-Mail, dated September 28, 2007) (forwarding agenda for Underwriters Due Diligence meeting on October 1, 2007).

<sup>2543</sup> Ex. 991 (Slovitt E-Mail, dated October 1, 2007).

<sup>2544</sup> Ex. 1079 at TRB0223091-92 (Chen E-Mail, dated September 28, 2007).

<sup>2545</sup> *Id.* at TRB0223093-94.

<sup>2546</sup> Ex. 1025 (Five Year Projected Financial Information and Key Credit Statistics and Ratios, dated October 1, 2007).

<sup>2547</sup> Ex. 1033 (Tribune Follow-Up Diligence Questions, dated October 3, 2007); Ex. 939 (Chen E-Mail, dated November 1, 2007).

"quarterly projections through 2009," "more details on classified revenue," "more details on interactive growth," and a "more detailed breakdown" of expenses.<sup>2548</sup> For the interactive business projections, the Lead Banks wanted to know whether investments in the interactive business could be cut by 50% (as in the downside case) while still maintaining growth of 15% a year.<sup>2549</sup> Perhaps prompted by a concern Citigroup articulated in October 2007 that Tribune's "cost cutting program [is] not fully baked" and Citigroup's "worrie[s] about newspaper projections,"<sup>2550</sup> the Lead Banks sought specific "case studies on results *already achieved* and impact on projections at selected Tribune newspapers for any new revenue enhancing and/or cash cost saving initiatives."<sup>2551</sup> The Lead Banks also noted that, "[b]ased on the Chicago and Los Angeles market reports, Tribune's newspapers' share of net paid circulation is declining," and they asked: "What factors are driving this trend? Who is gaining share in these markets: other newspapers?"<sup>2552</sup>

On November 8, 2007, the Lead Banks sent management a lengthy list of questions specifically directed at the solvency analysis being performed by VRC.<sup>2553</sup> These questions appear to have been largely drafted by Murray Devine.<sup>2554</sup> The questions pertaining to the net

---

<sup>2548</sup> Ex. 1033 at MD002030A (Tribune Follow-Up Diligence Questions, dated October 3, 2007).

<sup>2549</sup> *Id.*

<sup>2550</sup> Ex. 933 (Tuvlin E-Mail, dated October 6, 2007) (Merrill banker describing Citigroup's concerns: "Citi worried about leverage levels, though. Concerned that cost cutting program not fully baked. Also worried about newspaper projections. They may be pulling back on all-in leverage, at least based on informal conversation I had with one of their lev fin guys. . . .").

<sup>2551</sup> Ex. 939 at ML-TRIB-0586387 (Chen E-Mail, dated November 1, 2007) (second emphasis omitted).

<sup>2552</sup> *Id.*

<sup>2553</sup> Ex. 934 at ML-TRIB-0404767 (Kapadia E-Mail, dated November 8, 2007).

<sup>2554</sup> *See, e.g.*, Ex. 1026 (Kenny E-Mail, dated October 19, 2007) (relaying request from JPM that Murray Devine "send questions for VRC on their analysis"); Ex. 1027 (VRC Step 2 Solvency Opinion Valuation Questions, dated October 22, 2007); Ex. 1028 (Draft Step Two Solvency Valuation Questions, dated October 23, 2007) (produced from Murray Devine's files); Ex. 1029 (Draft Step Two Solvency Valuation Questions, dated November 6, 2007) (produced from Murray Devine's files).

present value of the S-Corporation/ESOP tax benefits and the assumption that Tribune could refinance its debts in 2014 and 2015 are addressed above.<sup>2555</sup> Other questions included:<sup>2556</sup>

- "Summarize preliminary conclusions, nature of due diligence investigation and scope of review";
- "Provide detail on the comparable transactions used in the analyses," including the underlying business and business mix of the target companies, whether the target companies were public or private, and the dates of the transactions;
- "What comparable public companies were used in the analyses?";
- "Explain the sum of individual assets method and underlying assumptions";
- "Explain the weighting given to the different valuation approaches, if any. Was any weighting different as between Step 1 and Step 2?"
- "Discuss the methods and assumptions used in the discounted cash flow analysis," including the discount rate used, whether the rate varied by year, information about the assumed capital structure, and the methodology and assumptions underlying the terminal year value;
- "Discuss whether methods and principles employed in solvency analysis are consistent between Step 1 and Step 2," including "any general changes in assumptions and outlook that were considered in the Step 2 analysis as compared with the Step 1 analysis";
- A series of inquiries concerning valuation of Tribune's equity investments;
- "Was the value of any excess real estate considered in the valuation?";

---

<sup>2555</sup> See Report at § III.H.3.

<sup>2556</sup> Ex. 934 at ML-TRIB-0404768-69 (Kapadia E-Mail, dated November 8, 2007).

- "What is considered the acceptable range of excess capital in the capitalization test [and what] is considered to be the acceptable range of equity cushion?";
- "Was a company specific or market capital structure used to calculate the levered cost of equity?";
- "What downside cases were considered[, what] were the relevant assumptions to the downside case and how did it affect overall analyses," including financial covenants and "revolver capacity to fund [Tribune's] operating capital needs?"; and
- "Discuss differences from recent research published by equity analysts and rating agency (Lehman, Deutsche Bank, Merrill, S&P)? Were these reports relevant to the analysis?".

Tribune waited nearly a month to respond to the Lead Banks' solvency diligence questions. On December 7, 2007, Mr. Bigelow sent VRC's answers (which had been edited by Tribune management) to the Lead Banks.<sup>2557</sup> VRC's answers were formatted as a memorandum from Bryan Browning and Mose Rucker of VRC to Mr. Bigelow, with a disclaimer at the outset that VRC was making "no representation or warranty . . . as to the accuracy or completeness of any information provided in this memorandum [or] information received from Tribune" and that.<sup>2558</sup>

This Memorandum is not intended to be a representation of Tribune's or any other company's solvency to [the Lead Banks] or any other person [and] VRC makes no representation or warranty regarding any actions the Company, [the Lead Banks,] or any other

---

<sup>2557</sup> Ex. 281 (Memorandum from Mr. Browning and Mr. Rucker to Mr. Bigelow, dated December 7, 2007); Ex. 754 (Bigelow E-Mail, dated December 7, 2007) (providing edits to VRC's draft responses to Lead Bank questions). Earlier that day, Mr. Bigelow also had sent the Lead Banks a copy of the preliminary solvency presentation VRC delivered to the Tribune Board on December 4, 2007. Ex. 1030 at MD002285A (Schaffzin E-Mail, dated December 7, 2007).

<sup>2558</sup> Ex. 281 at TRB0398553-54 (Memorandum from Mr. Browning and Mr. Rucker to Mr. Bigelow, dated December 7, 2007).

person may take in reliance on or in reference to matters presented in these responses.

In the substantive portion of the memorandum, VRC set out answers to each of the Lead Banks' 18 questions, and attached schedules with additional information on comparable companies and comparable transactions considered in VRC's analysis.

Five days later, the Lead Banks, with Murray Devine's assistance, sent an extensive set of follow-up questions,<sup>2559</sup> prefaced as follows:<sup>2560</sup>

The following are additional questions based upon a review of the Materials. The Banks request an opportunity to receive written responses to these questions as soon as possible or to discuss the answers to the questions on a due diligence telephone call as soon as possible. It is likely that the Banks will have further questions and a telephonic discussion will be necessary. In addition, the Banks request a separate opportunity to discuss with management of Tribune the Materials and the certificate required of Tribune management concerning solvency that is a condition to the Banks' financing commitments.

Much of the focus of the Lead Banks' follow-up questions was VRC's valuation of the anticipated S-Corporation/ESOP tax savings and VRC's assumption that Tribune could refinance its debts in the future, which are addressed elsewhere in the Report.<sup>2561</sup> Other questions included:<sup>2562</sup>

- We note that the comparable transactions list is largely made up of transactions that preceded significant changes in the market for securities of comparable companies. Why did this not merit giving lesser weight to the comparable transactions analyses? . . .

---

<sup>2559</sup> Ex. 755 at VRC0070618-19 (Rucker E-Mail, dated December 12, 2007) (attaching Lender Questions); Ex. 1031 (Draft Step 2 Solvency Valuation Questions, dated December 10, 2007); Ex. 1032 (Draft Step 2 Solvency Valuation Questions, dated December 11, 2007).

<sup>2560</sup> Ex. 755 at VRC0070618 (Rucker E-Mail, dated December 12, 2007) (attaching Lender Questions). "Materials" was a defined term encompassing VRC's December 4, 2007 presentation to the Tribune Board and VRC's December 7, 2007 memorandum answering the Lead Banks' initial solvency questions. *Id.*

<sup>2561</sup> See Report at § III.H.3.

<sup>2562</sup> Ex. 755 at VRC0070619 (Rucker E-Mail, dated December 12, 2007) (attaching Lender Questions).

- To what extent are the current trading values for Tribune's debt and credit default swaps relevant to the solvency analyses and the assumptions, capitalization and methodologies employed by VRC? In particular, what would these trading levels imply about appropriate equity discount rates and refinancing risks? . . .
- It appears as though the DCF valuation increased between Step One and Step Two while the other valuation methods declined—can you highlight for us what you believe to be the main drivers behind this?

The volume and tenor of the Lead Banks' questions raised concerns among Tribune's management that the Lead Banks were attempting to "spook" VRC by asking it "to assume all sorts of things, some of which are reasonable and some of which we thought weren't, [such as] 'Do you think the world is going to end' and various other things."<sup>2563</sup> Management rejected this approach.<sup>2564</sup>

[W]e [were not] required to put our independent solvency experts up on a stage and let anybody they want just throw as many curve balls at them as they can. . . . [T]he solvency firm is required to give an independent analysis to the board. They have to do their work, obviously in earnest and with diligence, but you don't have to subject them to a full on assault by anybody off the street.

Likely as a result of Tribune management's concerns, no written answers were ever provided to the Lead Banks' follow-up questions to VRC concerning solvency.<sup>2565</sup> Instead, Tribune management, the Lead Banks, Murray Devine, and attorneys for both sides (including litigation counsel Tribune retained in preparation for a possible breach of contract lawsuit if the Lead Banks did not fund at Step Two<sup>2566</sup>) scheduled a telephone call for December 17, 2007 to

---

<sup>2563</sup> Examiner's Sworn Interview of Crane Kenney, July 8, 2010, at 22:14-22. *See also id.* at 28:19-29:4 ("[I]n some ways we felt like they were . . . saying: Well, let's see if we can just throw a mess of stuff at VRC that might get them so nervous they don't issue their opinion. So did you assume that the world might end tomorrow, did you assume this, that and the other.").

<sup>2564</sup> Examiner's Sworn Interview of Crane Kenney, July 8, 2010, at 24:4-12.

<sup>2565</sup> *See* Examiner's Sworn Interview of Mose Rucker and Bryan Browning, June 30, 2010, at 277:18-281:10.

<sup>2566</sup> Examiner's Sworn Interview of Crane Kenney, July 8, 2010, at 16:22-17:3 ("I remember telling my CEO I want to hire yet another law firm specifically to make sure if [the Lead Banks] breach our commitment we have



discuss the Lead Banks' questions.<sup>2567</sup> Three days before that call, however, the Lead Banks had their own internal call to discuss solvency. BofA banker Daniel Petrik took the following notes of the Lead Banks' December 14, 2007 conference call:<sup>2568</sup>

---

recourse. That was Quinn [Emanuel]."). Mr. Kenney invited Michael Carlinsky of Quinn Emanuel to join the December 17, 2007 call. Ex. 1080 (Kenney E-Mail, dated December 17, 2007).

<sup>2567</sup> Ex. 1080 (Kenney E-Mail, dated December 17, 2007).

<sup>2568</sup> Ex. 959 at BOA-TRB-0001201A (Petrik Handwritten Notes, dated December 14, 2007).

## Word Product

12/14/07 OW call

- Need URC info today and discuss Monday
- If A date - change entire to NYSE ~~to~~  
to Employees

Chris

Ther Not 100% final but being  
going ahead and funding  
Risk greater if do not fund

URC - Not 100% but leaving  
to not fund - ~~is~~

- Reasonable that not a solvent company
- Not planning on being long wolf

Julia

Cite - Numerous x Not Significant to fund  
- ~~is~~ More risk of end up in BK  
- Focus on understanding rest of set funding  
- Not get landed -

BofA - Toac Biaggi Ball Tower  
- Lygon S. Dan Kelly  
Reizer, Dan P., Hetch

If in good faith - good defense

Mr. Petrik's notes appear to state as follows:<sup>2569</sup>

Word Product

12/14/07 - UW call

- Need VRC info today and discuss Monday
- If D date - change entries to NYS to Employees

Chris JPM - Not 100% final but leaning

Going ahead and funding

Risk greater if do not fund

MRL - Not 100% but leaning

to not fund

- Reasonable that not a solvent company
- Not planning on being lone wolf

Julie Citi - Numerous and not significant to not fund

- More risk if end up in bankruptcy
- Focus on understanding risk of not funding
- Not yet landed -

BofA - Tom Briggan Bill Bower

- Lynn S. Dan Kelly

Rajin, Dan P., [illegible]

If in good faith - good defense

---

<sup>2569</sup> *Id.*

The Examiner received Mr. Petrik's notes after all Lead Bank interviews had concluded, shortly before the deadline for filing the Report. Accordingly, the Examiner was not able to question witnesses about the views expressed on the December 14, 2007 conference call. It does appear, however, that after December 14, 2007 the focus of the Lead Banks' diligence shifted from the substance of VRC's solvency conclusions to the process by which VRC arrived at those conclusions. For example, in contrast to the technical, multi-part questions the Lead Banks sent to Tribune on December 12, 2007,<sup>2570</sup> the final set of Lead Bank questions propounded on December 17, 2007 consisted of the following:<sup>2571</sup>

1. Please confirm that the changes between the December 4 and December 18 draft solvency opinion arose from VRC's ongoing independent analysis and were not influenced by others, including the Company, its Board of Directors or their respective advisors.
2. Please confirm that the form and format of the solvency opinion that is to be delivered on December 18 (including the qualifications, assumptions or exceptions thereto) will be in substantially the same form and format as the opinion delivered in connection with the first step transaction.
3. Would VRC's opinion reach the same solvency conclusion if the PHONES liability was considered at face value instead of market value as described in the draft December 18th presentation?
4. If VRC's opinion would reach the same solvency conclusion if the PHONES liability was considered at face value, would VRC's opinion reach the same solvency conclusion if the PHONES liability was considered at face value and the discount rate applied to the ESOP Tax Savings was changed to match EGI/Zell's implied IRR of approximately 41%?

Tribune General Counsel Crane Kenney responded the next day:<sup>2572</sup>

---

<sup>2570</sup> Ex. 755 at VRC0070619 (Rucker E-Mail, dated December 12, 2007) (attaching Lead Bank Questions).

<sup>2571</sup> Ex. 1037 (Kapadia E-Mail, dated December 17, 2007).

<sup>2572</sup> Ex. 1068 (Kapadia E-Mail, dated December 19, 2007).

The Board and its special counsel, Skadden, did not react well to your questions but at our urging were willing to provide an excerpt from the draft minutes of today's meeting. I believe this will address your concerns regarding their diligence and VRC's independence. We are still at work on the other three questions and hope to have some resolution tomorrow.

Mr. Kenney attached to his message a one-page document entitled "Excerpt from 12/18/07 minutes," which recited the following events that purportedly transpired at the meeting of the Tribune Board:<sup>2573</sup>

Representatives of VRC reviewed its solvency analysis with the board. Management confirmed its belief that VRC's analysis and the underlying assumptions and projections are reasonable, if not conservative. Diligence questions that had been posed by the banks to VRC and to management were previously made available to the board. The board (directly and through its counsel and financial advisors) posed its own questions to VRC and to management and received answers thereto. Without limitation, (i) VRC confirmed that its opinion was the result of its independent, professional advice without improper influence of management, (ii) VRC confirmed that it engaged in a significant testing of both management's base case and downside cases, (iii) VRC confirmed that it had received all the information it had requested from the Company; (iv) VRC described its internal opinion review process as rigorous and confirmed that its fee would be the same whether it opined favorably or unfavorably as to solvency, (v) VRC explained the changes in its approach to the PHONES valuation and that such change was not, in any event, outcome determinative and (vi) VRC confirmed it received and considered written questions submitted by the four lead banks to management related to the second step transaction and its solvency analysis reflects VRC's consideration of those questions.

The board then met with VRC in executive session, without management and continued its review of VRC's solvency analysis. Management then rejoined the meeting and after completion of VRC's review and presentation and all questions and answers, VRC rendered its opinion, and said that it would provide a written opinion brought down to closing. Management then advised the board that management stands ready to deliver the closing certificate contemplated by the Credit Agreement as to solvency

---

<sup>2573</sup> *Id.* at JPM\_00475089.

and that such certificate will be based upon its own analysis, as further supported by the VRC opinion and analysis. Thereupon, the board recessed and the Special Committee met with its counsel and financial advisors. When the board reconvened, it was advised that the Special Committee recommended acceptance of the VRC opinion in satisfaction of the condition to closing set forth in the Merger Agreement.

Based upon the presentations and discussions at the meeting (as well as presentations and discussions at prior meetings of the board, including on May 9, 2007 and December 4, 2007) and the recommendation of the Special Committee, the board determined (i) that it could rely in good faith on the VRC opinion and (ii) that the opinion is in form and substance satisfactory to the Company for purposes of Section 6.2(e) of the Merger Agreement.

The final, signed document that purports to be the minutes of the Tribune Board's December 18, 2007 meeting differs in several respects from the excerpt Mr. Kenney circulated to the Lead Banks.<sup>2574</sup> In addition to certain typographical and stylistic changes that suggest the document signed by Mr. Kenney is a later version of the document Mr. Kenney sent to the Lead Banks,<sup>2575</sup> the two documents differ in the following respects:<sup>2576</sup>

- The document signed by Mr. Kenney omits the sixth item that VRC allegedly confirmed to the Tribune Board, that VRC "received and considered written questions submitted by the four lead banks to management related to the second step transaction and its solvency analysis reflects VRC's consideration of those questions";

---

<sup>2574</sup> Ex. 11 (Tribune Board Meeting Minutes, dated December 18, 2007).

<sup>2575</sup> For example, the document Mr. Kenney signed: (a) specifies the names of the VRC representatives (rather than referring to them as "Representatives of VRC"), (b) changes all references from "board" to "Board," consistent with other Tribune Board minutes (*see, e.g.*, Ex. 58 (Tribune Board Meeting Minutes, dated May 1, 2006)), and (c) removes a stray space before a closed parenthesis in the final paragraph.

<sup>2576</sup> Compare Ex. 1068 at JPM\_00475089 (Kapadia E-Mail, dated December 19, 2007) with Ex. 11 at TRB0415685-86 (Tribune Board Meeting Minutes, dated December 18, 2007). Notably, certain Parties referred the Examiner to portions of Mr. Kenney's draft excerpt that were ultimately omitted from the final, duly adopted minutes, indicating that these Parties are unaware that the excerpt Mr. Kenney circulated to the Lead Banks was not the final document approved by the Tribune Board as the official minutes of the December 18, 2007 meeting.

- The document signed by Mr. Kenney omits the statement that "[t]he board then met with VRC in executive session, without management and continued its review of VRC's solvency opinion analysis"; and

- The document signed by Mr. Kenney adds a notation that Mr. Zell abstained from the Tribune Board's vote to accept and rely on the VRC opinion.

Notably, Mr. Kenney did not forward excerpts from the minutes of the Special Committee, even though the draft Special Committee minutes ultimately presented to the Examiner as reflecting the December 18, 2007 proceedings before the Special Committee purport to demonstrate additional diligence by the Special Committee (with representatives from Morgan Stanley) concerning the validity of VRC's Step Two solvency analysis. The December 18, 2007 Special Committee meeting is discussed in more detail elsewhere in the Report.<sup>2577</sup>

## **(2) JPM's Due Diligence.**

Although it is not clear when JPM started to generate its own valuation analyses, the Examiner located in the document depository at least eight drafts of such analyses with dates ranging from December 10, 2007 through December 18, 2007. The latest of these, dated December 18, 2007, calculates Tribune's net equity value under a range of "stress," "low," "mid," and "high" valuations:<sup>2578</sup>

	<b>Stress</b>	<b>Low</b>	<b>Mid</b>	<b>High</b>
Excess Capital (post-Step Two)	(\$1.225 billion)	\$50 million	\$1.505 billion	\$3.209 billion

---

<sup>2577</sup> See Report at § III.G.1.

<sup>2578</sup> The Examiner located four JPM documents dated December 18, 2007 titled "Tribune Valuation Update." The documents appear to be substantially similar if not identical. *See* Ex. 960 (Tribune Valuation Update, dated December 18, 2007); Ex. 961 (Tribune Valuation Update, dated December 18, 2007); Ex. 962 (Tribune Valuation Update, dated December 18, 2007); Ex. 963 (Tribune Valuation Update, dated December 18, 2007).

JPM's analysis suggested that Tribune would be insolvent only under a "stress" case, would be barely solvent under a "low" case, and would be substantially solvent under the "mid" and "high" cases. In addition to the fact that JPM's calculations of the net present value of the anticipated S-Corporation/ESOP tax savings are substantially lower than VRC's final calculations,<sup>2579</sup> JPM's valuations of Tribune's equity value (like VRC's) appear to be upwardly biased due to high comparable transactions valuations.<sup>2580</sup> To illustrate, if JPM's December 18, 2007 internal analysis were adjusted to eliminate the comparable transactions valuation methodology (thereby giving one-half equal weight to the comparable companies and discounted cash flow methodologies),<sup>2581</sup> and if the net present value of the anticipated S-Corporation/ESOP tax savings was excluded (as is appropriate for purposes of assessing solvency<sup>2582</sup>), the following stress, low, mid, and high cases would result:<sup>2583</sup>

Analysis	Stress	Low	Mid	High
Excess Capital (post-Step Two) Excluding Comparable Transactions and NPV of Tax Savings	(\$2.017 billion)	(\$1.445 billion)	(\$92 million)	\$1.716 billion

<sup>2579</sup> JPM assigned \$612 million, \$648 million, and \$687 million in value for the S-Corporation/ESOP tax savings in its low, mid, and high valuations, respectively, compared to VRC's \$816 million, \$876 million, and \$936.1 million valuations. *Compare* Ex. 960 at JPM\_00156245 (Tribune Valuation Update, dated December 18, 2007) with Ex. 1045 at TRB0293989 (VRC Solvency Analysis, dated December 20, 2007).

<sup>2580</sup> Ex. 960 at JPM\_00156245 (Tribune Valuation Update, dated December 18, 2007) (giving one-third equal weight to "Transactions comps" valuation methodology that trends substantially higher than the "Trading Comps" and "DCF" valuation methodologies). The proper weighting of the valuation methods is addressed elsewhere in the Report. *See* Report at §§ III.E.3. and III.H.3.

<sup>2581</sup> This is not to say that the comparable transactions methodology is impermissible, but rather to illustrate the potential distortion that can result if comparable transactions are not appropriately selected. *Cf.* Ex. 931 (Tuvlin E-Mail, dated December 7, 2007) (internal Merrill e-mail critiquing VRC's analysis because "comparable transactions in the context of few to none in the past year [make it] a challenge to understand their value here").

<sup>2582</sup> *See* Report at § IV.B.5.d.(10).

<sup>2583</sup> The values reflected in the table are based on the values set forth in Ex. 960 at JPM\_00156245 (Tribune Valuation Update, dated December 18, 2007).



It is also notable that JPM appears to have added a fourth case—the "stress" case—at precisely the point in time that its internal analyses began showing insolvency in the low case.<sup>2584</sup> The drafts prepared between December 10, 2007 and December 13, 2007 show how JPM's final equity valuation analysis evolved, including the addition of a stress case:

Document	Stress	Low	Mid	High
JPM 12/10/07 Analysis <sup>2585</sup>	N/A	\$146 million	\$1.918 billion	\$3.955 billion
JPM 12/12/07 Analysis I <sup>2586</sup>	N/A	\$146 million	\$1.918 billion	\$3.955 billion
JPM 12/12/07 Analysis II <sup>2587</sup>	N/A	\$246 million	\$1.868 billion	\$3.755 billion
JPM 12/13/07 Analysis I <sup>2588</sup>	N/A	\$246 million	\$1.868 billion	\$3.755 billion
JPM 12/13/07 Analysis II <sup>2589</sup>	N/A	(\$329 million)	\$1.450 billion	\$3.301 billion
JPM 12/13/07 Analysis III <sup>2590</sup>	N/A	(\$504 million)	\$1.202 billion	\$2.974 billion
JPM 12/13/07 Analysis IV <sup>2591</sup>	(\$546 million)	\$50 million	\$1.505 billion	\$3.299 billion

Although the Examiner is not able to determine the order in which each analysis bearing the same date was prepared, the overall trend of the analyses from December 10, 2007 to December 13, 2007 appears to suggest that projected insolvency in the low case led JPM to add a fourth case (the stress case) to reflect the insolvency scenario, with modifications to the low case such that it once again reflected solvency (albeit thin).

<sup>2584</sup> Ex. 964 at JPM\_00156034 (Tribune Valuation Update, dated December 13, 2007).

<sup>2585</sup> Ex. 1014 at JPM\_00108127 (Tribune Valuation Update, dated December 10, 2007).

<sup>2586</sup> Ex. 1015 at JPM\_00108134 (Tribune Valuation Update, dated December 12, 2007).

<sup>2587</sup> Ex. 1016 at JPM\_00108148 (Tribune Valuation Update, dated December 12, 2007).

<sup>2588</sup> Ex. 1017 at JPM\_00108141 (Tribune Valuation Update, dated December 13, 2007).

<sup>2589</sup> Ex. 1018 at JPM\_00156058 (Tribune Valuation Update, dated December 13, 2007).

<sup>2590</sup> Ex. 1019 at JPM\_00156022 (Tribune Valuation Update, dated December 13, 2007).

<sup>2591</sup> Ex. 964 at JPM\_00156034 (Tribune Valuation Update, dated December 13, 2007).

When questioned about these internal analyses during his interview with the Examiner, JPM's Rajesh Kapadia could not recall the intended audience for which they were prepared, but he believed the analyses were merely a continuation of JPM's Step Two solvency diligence.<sup>2592</sup> Mr. Kapadia stated that he did not believe JPM's diligence in the week prior to the closing of the Step Two Transactions was shared with senior JPM executives such as James Lee or Jamie Dimon, nor did Mr. Kapadia believe that JPM was using these internal solvency analyses to make a final decision whether to close.<sup>2593</sup> To the contrary, and generally consistent with the view apparently expressed by JPM on the December 14, 2007 Lead Bank conference call that the "risk [was] greater if [the Lead Banks] do not fund,"<sup>2594</sup> albeit with a much different spin, Mr. Kapadia indicated that "in practice, people don't go up to the 11th hour and not close the deal. This is not like we're . . . diligencing to get out of the deal."<sup>2595</sup> Indeed, Mr. Kapadia could recall only one instance in his career in which a deal did not close because the closing conditions were not met, and in that case, everyone involved "knew seven to ten days before closing and we reconfigured the deal and took it to market six months later."<sup>2596</sup>

Certain Parties referred the Examiner to an e-mail James Lee sent to Jamie Dimon the day before the closing of the Step Two Transactions, in which Mr. Lee reports that he spoke to Samuel Zell that morning "to get his confirmation that [Tribune] was solvent and he was going to make good on his commitment to me to make this deal work,"<sup>2597</sup> which those Parties believe is an indication that JPM believed that Tribune was or would be insolvent upon the closing of

---

<sup>2592</sup> Examiner's Interview of Rajesh Kapadia, June 25, 2010.

<sup>2593</sup> *Id.*

<sup>2594</sup> Ex. 959 at BOA-TRB-0001201A (Petrik Handwritten Notes, dated December 14, 2007).

<sup>2595</sup> Examiner's Interview of Rajesh Kapadia, June 25, 2010.

<sup>2596</sup> *Id.*

<sup>2597</sup> Ex. 846 (Lee E-Mail, dated December 19, 2007).

Step Two. When questioned about this e-mail during his interview with the Examiner, Mr. Dimon characterized the communication as a personal entreaty from Mr. Lee to Mr. Zell, in the face of Tribune's declining financial performance, to do the necessary work to improve Tribune's financial performance *i.e.*, "this is just saying 'hey partner, we've got this far, we need you now to give it everything you've got.'"<sup>2598</sup> This explanation accords with Mr. Zell's statement during his interview with the Examiner that by the time Mr. Lee made his telephone call to Mr. Zell, "I knew he was going to fund."<sup>2599</sup>

I never heard the word "solvency" with him. I've never had any conversations about this whole solvency issue other than in the parts of the board meetings. This is Jimmy, and he truly believes as I do, that banking is personal. He wanted to make sure that I was still there, and I was.

Shortly after Mr. Lee's call with Mr. Zell on December 19, 2007, William Pate of EGI forwarded to Mr. Lee a speech Mr. Zell had given to Los Angeles Times employees, apparently to emphasize Mr. Zell's commitment to making the transaction work.<sup>2600</sup>

Certain Parties have also referred the Examiner to an e-mail from Darryl Jacobson of JPM to Mr. Dimon assessing whether JPM could assist Tribune in either a direct share repurchase or a total return swap,<sup>2601</sup> which those Parties believe is another indication that JPM anticipated a future Tribune bankruptcy. In this e-mail, Mr. Jacobson cautioned that if JPM participated in a total return swap, "[t]he Bank's credit exposure . . . could be equitably subordinated in bankruptcy."<sup>2602</sup> The share repurchase or swap transaction discussed in Mr. Jacobson's e-mail arose when Mr. Zell contacted Mr. Dimon to suggest Tribune or JPM take

---

<sup>2598</sup> Examiner's Interview of Jamie Dimon, June 25, 2010.

<sup>2599</sup> Examiner's Interview of Samuel Zell, June 14, 2010.

<sup>2600</sup> Ex. 1081 (Lee E-Mail, dated December 19, 2007).

<sup>2601</sup> Ex. 839 (Jacobson E-Mail, dated August 24, 2007).

<sup>2602</sup> *Id.*

advantage of the low share price in August 2007 (Tribune Common Stock was trading at less than the Merger price) to essentially buy for \$26 a share what the Lead Banks were contractually committed to provide funding to buy four months later for \$34 a share because it was "free money" as far as Mr. Zell was concerned, but according to Mr. Zell, JPM declined to do so because of "a technical issue."<sup>2603</sup> Mr. Jacobson's e-mail reflects JPM's conclusion that contractual and practical impediments (including "the potential for creating diverging economic interests") prevented JPM from participating in the transaction proposed by Mr. Zell, and that if JPM were to nonetheless do so, any claim in a hypothetical future reorganization proceeding could be equitably subordinated.<sup>2604</sup> Mr. Jacobson's concerns in this regard do not suggest to the Examiner that JPM was anticipating a future Tribune bankruptcy.

### **(3) Merrill's Due Diligence.**

Merrill began its Step Two valuation due diligence in August 2007, when Todd Kaplan sent an internal e-mail suggesting that Merrill "should pull out the letters from Valuation Research this spring and try to replicate the type of analysis they did," which the Merrill bankers described as "a valuation exercise that focuses on comps" coupled with a "test [of] covenant future compliance to determine if [Tribune] can pay debts when due."<sup>2605</sup> From August 2007 through December 2007, Merrill prepared numerous draft financial analyses that reflected Tribune's solvency (or lack thereof) following Step Two. Much of Merrill's activity took place in the three weeks before the closing of the Step Two Financing Transactions, and the final three

---

<sup>2603</sup> Examiner's Interview of Samuel Zell, June 14, 2010.

<sup>2604</sup> Ex. 839 (Jacobson E-Mail, dated August 24, 2007).

<sup>2605</sup> Ex. 1055 at ML-TRIB-0395566 (Kaplan E-Mail, dated August 17, 2007). Consistent with this description, what appears to be the first report Merrill produced on Tribune's valuation at Step Two was circulated three days later in an e-mail with the subject line "Valuation and Covenant Analysis—Tribune." Ex. 1056 (Hwang E-Mail, dated August 21, 2007).

analyses considered by the Examiner are each dated December 16, 2007.<sup>2606</sup> These analyses show varying degrees of insolvency (as reflected by equity value) in all three of the "low" and "mid" range valuations:

Document	Low	Mid	High
Merrill 12/16/07 Analysis I <sup>2607</sup>	(\$1.545 billion)	(\$287 million)	\$1.027 billion
Merrill 12/16/07 Analysis II <sup>2608</sup>	(\$1.946 billion)	(\$688 million)	\$626 million
Merrill 12/16/07 Analysis III <sup>2609</sup>	(\$1.946 billion)	(\$487 million)	\$1.027 billion

Each of these analyses gives equal weight to comparable companies, sum-of-the-parts and discounted cash flow valuations to ascertain Tribune's net equity value, and each assumes (in all scenarios) \$469 million in S-Corporation/ESOP tax savings.<sup>2610</sup> Subtracting those anticipated tax savings (which, as the Examiner concludes elsewhere in the Report should not be included in assessing Tribune's solvency),<sup>2611</sup> substantially deepens the projected insolvency in all of Merrill's low and mid range valuations, and reduces the solvency cushion in one of Merrill's high range valuations to \$157 million.

The difference in values reached across the three Merrill analyses is entirely due to differences in the comparable companies valuation, which comprises one-third of the average

<sup>2606</sup> Ex. 1011 (Valuation Analysis of Tribune Company, dated December 16, 2007); Ex. 1012 (Valuation Analysis of Tribune Company, dated December 16, 2007); Ex. 1013 (Valuation Analysis of Tribune Company, dated December 16, 2007).

<sup>2607</sup> Ex. 1011 at ML-TRIB-0009932 (Valuation Analysis of Tribune Company, dated December 16, 2007). A version of what appears to be substantially the same document (also dated December 16, 2007) is attached to an e-mail from January 2008 that states: "This is final version with summarized sotp." Ex. 1057 (Harrison E-Mail, dated January 8, 2008).

<sup>2608</sup> Ex. 1012 at ML-TRIB-0486749 (Valuation Analysis of Tribune Company, dated December 16, 2007).

<sup>2609</sup> Ex. 1013 at ML-TRIB-0486789 (Valuation Analysis of Tribune Company, dated December 16, 2007).

<sup>2610</sup> Ex. 1011 (Valuation Analysis of Tribune Company, dated December 16, 2007); Ex. 1012 (Valuation Analysis of Tribune Company, dated December 16, 2007); Ex. 1013 (Valuation Analysis of Tribune Company, dated December 16, 2007).

<sup>2611</sup> See Report at § IV.B.5.d.(10).

operating enterprise value (the other two-thirds consisting of a DCF valuation and an SOP valuation).<sup>2612</sup> The Merrill analyses showed solvency only when the comparable companies valuation used a blended 9.0x multiple of 2007 estimated operating EBITDA—a result that was not even contemplated on a model dated three days earlier that showed insolvency across the low, mid, and high ranges using an 8.0x multiple for the "high" range.<sup>2613</sup> Indeed, to reach the blended 9.0x multiple that yielded solvency, Merrill had to assign a 7.0x multiple to Tribune's Publishing Segment,<sup>2614</sup> yet a contemporaneous internal Merrill e-mail faulted VRC's analysis for using a similar assumption: "how can they defend the publishing multiples of 7.4x when the public comps trade in the 6x range[?]"<sup>2615</sup>

The Examiner questioned Merrill banker Todd Kaplan about these internal models during his sworn interview.<sup>2616</sup> Mr. Kaplan repeatedly disclaimed knowledge about the calculations and assumptions underlying these analyses, and testified that he would not consider any of them to be "a Merrill Lynch valuation analysis"<sup>2617</sup>—notwithstanding that each is printed on Merrill stationery and bears the title "Valuation Analysis of Tribune Company." Rather, according to Mr. Kaplan, each document was "our attempt to understand how VRC was developing their

---

<sup>2612</sup> Unlike VRC's solvency analysis, the Merrill analyses do not use a comparable transactions valuation method. An internal Merrill e-mail critiquing VRC's analysis notes that the author "would like to see the comparable transactions they are using . . . comparable transactions in the context of few to none in the past year [make it] a challenge to understand their value here." Ex. 931 (Tuvlin E-Mail, dated December 7, 2007).

<sup>2613</sup> Ex. 1058 at ML-TRIB-0486707 (Valuation Analysis of Tribune Company, dated December 13, 2007).

<sup>2614</sup> Ex. 1011 at ML-TRIB-0009933-36 (Valuation Analysis of Tribune Company, dated December 16, 2007); Ex. 1012 at ML-TRIB-0486750-53 (Valuation Analysis of Tribune Company, dated December 16, 2007); Ex. 1013 at ML-TRIB-0486790-93 (Valuation Analysis of Tribune Company, dated December 16, 2007).

<sup>2615</sup> Ex. 931 at ML-TRIB-0406176 (Tuvlin E-Mail, dated December 7, 2007).

<sup>2616</sup> Examiner's Sworn Interview of Todd Kaplan, July 8, 2010, at 142:2-157:14.

<sup>2617</sup> *Id.* at 155:2-3.

work."<sup>2618</sup> Mr. Kaplan further testified that he could not recall whether he or any of the other bankers working on the transaction had reservations about closing.<sup>2619</sup>

Q: Did you have any reservations at that time about closing step two?

A: I don't recall. My particular feelings were I do know that we were working hard to ascertain whether or not the transaction was going to close, but beyond that I don't recall what my particular feelings were at that time.

Q: Were you having discussions at that time . . . with the other lenders?

A: Yes.

Q: Did any of the other lenders express to you that they had reservations about closing step two?

A: I don't recall.

Mr. Kaplan's lack of recollection aside, the documentary evidence reflects Merrill's concern that Tribune would be rendered insolvent at Step Two.<sup>2620</sup> Handwritten notes of the Lead Bank call that took place six days before Step Two closed (at which point Merrill was "[n]ot 100% but leaning not to fund")<sup>2621</sup> appear to reflect Merrill's belief that Tribune was "not a solvent company," yet Merrill was "not planning on being [the] lone wolf" that did not close.<sup>2622</sup>

---

<sup>2618</sup> *Id.* at 155:5-6.

<sup>2619</sup> *Id.* at 40:15-41:7.

<sup>2620</sup> On July 16, 2010, the Examiner's counsel received from Merrill's counsel what purports to be a "corrected" transcript of Mr. Kaplan's July 8, 2010 sworn interview with the Examiner, containing numerous multi-paragraph additions to the sworn testimony Mr. Kaplan gave on July 8, 2010. Ex. 976 (Letter from Jane W. Parver, dated July 16, 2010). Beyond the fact that these extensive additions are different in kind from every other errata sheet submitted in connection with the Examiner's sworn interviews, and appear to contradict Mr. Kaplan's testimony that he had no recollection of key events, documents, and circumstances, the Examiner notes that Mr. Kaplan's "corrected" transcript was sent one day after the Examiner notified counsel to the Lead Banks that the Examiner was in possession of the handwritten notes described in the remainder of this paragraph. Ex. 959 at BOA-TRB-0001201A (Petrik Handwritten Notes, dated December 14, 2007). The Examiner makes the "corrected transcript" part of the record of the Investigation, but does not believe it is entitled to any weight.

<sup>2621</sup> Ex. 959 at BOA-TRB-0001201A (Petrik Handwritten Notes, dated December 14, 2007).

<sup>2622</sup> *Id.*

Additionally, in an e-mail dated October 17, 2007, Michael Costa (who was working on behalf of MLPFS, the Merrill Entity advising the Tribune Board) gave Mr. Kaplan a report on the Tribune Board meeting that occurred that day: "Sense mgmt gave impression closing on target mid Nov early Dec. . . . Not sure solvency issue got alot [sic] of focus."<sup>2623</sup> The next line of Mr. Costa's e-mail asks, "Todd where are we in thinking thru solvency issue if company's advisor thinks solvent but we think otherwise?"<sup>2624</sup> No written response apparently was given.

#### **(4) Citigroup's Due Diligence.**

In December 2007, Citigroup prepared an internal analysis assessing Tribune's solvency following consummation of Step Two.<sup>2625</sup> At her sworn interview with the Examiner, Citigroup's Julie Persily stated that this December 2007 analysis represented a "bust case or a breaking case," and did not represent Citigroup's views on fair market value.<sup>2626</sup> The analysis compared five values for both a comparable companies approach and a discounted cash flow approach: (a) a "Citi Valuation using Citi Projections," (b) a "Citi Valuation using Management Projections," based on management's base case; (c) a "Citi Valuation using Management Projections," based on management's downside case, (d) the "mid" valuation presented by VRC to the Tribune Board on December 4, 2007, and (e) the "low" valuation presented by VRC to the Tribune Board on December 4, 2007:<sup>2627</sup>

---

<sup>2623</sup> Ex. 1050 (Costa E-Mail, dated October 17, 2007).

<sup>2624</sup> *Id.*

<sup>2625</sup> Ex. 1020 at CITI-TRIB-CC 00023666 (Solvency Analysis, dated December 2007). Although the Citigroup analysis bears no date, its reference to VRC's December 4, 2007 presentation to the Tribune Board suggests that it was prepared in December 2007. *Id.*

<sup>2626</sup> Examiner's Sworn Interview of Julie Persily, July 8, 2007, at 192:1-18 and 201:20-21.

<sup>2627</sup> Ex. 1020 at CITI-TRIB-CC 00023666 (Solvency Analysis, dated December 2007).



<b>Approach</b>	<b>Citigroup Valuation Using Citigroup Projections</b>	<b>Citigroup Valuation w/Tribune Base Case</b>	<b>Citigroup Valuation w/Tribune Downside Case</b>	<b>VRC Valuation High Range</b>	<b>VRC Valuation Low Range</b>
Comparable Companies	(\$1.428 billion)	\$215 million	(\$1.064 billion)	\$2.201 billion	\$1.047 billion
Discounted Cash Flow	(\$1.653 billion)	\$2.130 billion	(\$836 million)	\$2.641 billion	\$1.548 billion

Citigroup's analysis showed insolvency using Tribune management's downside scenario if Citigroup's internal valuation parameters were applied. Those parameters were substantially more conservative than the parameters used by VRC.<sup>2628</sup>

<b>Parameters</b>	<b>WACC</b>	<b>Cost of Debt</b>	<b>Cost of Equity</b>	<b>DCF EBITDA Exit Multiples</b>	<b>Perpetuity Growth Rates</b>
Citigroup	8.3%	L+400bps to L+450bps	11.7%	6.5x	-0.5% to +1%
VRC	6.5% to 8.5%	L+200bps	9.7% to 10.6%	5.7x to 10.5x	-1.3% to +1.9% (implied)

Moreover, Citigroup's internal projections were substantially more negative than management's downside case projections for both the Publishing Segment and the Broadcasting Segment, resulting in the following differences in operating cash flow:<sup>2629</sup>

<b>Projections</b>	<b>2007PF</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Citigroup	\$1.192 billion	\$1.063 billion	\$966 million	\$934 million	\$849 million	\$858 million
Management Downside	\$1.192 billion	\$1.091 billion	\$1.039 billion	\$1.032 billion	\$976 million	\$968 million

Citigroup banker Julie Persily was asked about the negative equity values reflected on this internal analysis at her sworn interview with the Examiner:<sup>2630</sup>

---

<sup>2628</sup> *Id.*

<sup>2629</sup> *Id.*

<sup>2630</sup> Examiner's Sworn Interview of Julie Persily, July 8, 2010, at 196:7-197:11.

- Q: If I read this correctly in the management downside case and in Citi's case the company is under water when it comes to total equity value on the first page?
- A: Yeah, I want to be careful. I'm glad you chose those words because under water doesn't necessarily mean it's [not] solvent. . . . [T]he equity would be, Zell's investment would be under water and perhaps the value of those PHONES as well.
- Q: [W]hy do you draw a distinction between negative equity and not necessarily insolvent?
- A: Because there are very many solvent companies that have negative equity and as we learned through this process there are a lot of ways to value solvency and one of them is ability to meet commitments when they become due in the near term one year, two years out and this company had a very big revolver and it had a lot of asset sales, assets which we knew there was third party interest in and so we believed that this company was going to have access to liquidity for quite some time.

Two days before the Lead Bank conference call on which Ms. Persily apparently expressed the view that it might be less problematic "to not fund" rather than risking a Tribune bankruptcy,<sup>2631</sup> Citicorp approached Houlihan Lokey about a possible solvency-related engagement that (to at least one individual at Houlihan Lokey) "smell[ed] like divorce work."<sup>2632</sup> Specifically, on December 12, 2007, Ben Buettell of Houlihan Lokey sent an e-mail stating that one of his colleagues received a telephone call from Citigroup's general counsel:<sup>2633</sup>

She was calling to see if we could be helpful in assessing the solvency of Tribune Company. . . . The good news is that we would not be hired to deliver a solvency opinion, but if we end up where I think we all know we would end up with our analysis, we may be the ones to "kill the deal" so to speak and not certain we want to be involved in that mess.

---

<sup>2631</sup> Ex. 959 at BOA-TRB-0001201A (Petrik Handwritten Notes, dated December 14, 2007).

<sup>2632</sup> Ex. 1008 (Beiser E-Mail, dated December 12, 2007).

<sup>2633</sup> Ex. 1006 (Buettell E-Mail, dated December 12, 2007).

Later that evening, Mr. Buettell sent an e-mail to Citigroup's general counsel:<sup>2634</sup>

Had a brief call with a few of my senior partners. A few questions:  
1) what happens if we all conclude that the company is not solvent,  
what does the bank group do between now and December 20th?  
Are all of the terms and pricing set on the loan? Do you have any  
sense about what the other three banks have been discussing with  
[Tribune]?

Ultimately Houlihan Lokey was not engaged by Citigroup. Seven days later, when a Wall Street Journal report indicated that VRC was going to issue its Step Two solvency opinion, an analyst from Houlihan Lokey wrote: "According to this, it sounds like they got the second stage solvency opinion," to which Mr. Buettell replied: "Imagine that, getting a solvency opinion despite the changes with the company and the credit markets. Hope they put in language about selling the Cubs and Wrigley Field for billions in April to pay down debt."<sup>2635</sup>

#### **(5) BofA's Due Diligence.**

Other than internally evaluating and potentially contributing to the questions prepared by Murray Devine,<sup>2636</sup> BofA does not appear to have performed an internal solvency analysis at Step Two. When asked whether BofA had done an internal analysis in the fall of 2007 "to determine whether Tribune's assets exceeded its liabilities," Daniel Petrik (the credit products officer on the transaction for BofA<sup>2637</sup>) responded: "I don't think so."<sup>2638</sup> However, BofA's Leveraged Finance Screening Committee received updates from the deal team on August 3, 2007 and December 13, 2007.<sup>2639</sup> These memos listed an "enterprise value" for Tribune that was

---

<sup>2634</sup> Ex. 1007 at HLHZ\_Tribune001190-91 (Buettell E-Mail, dated December 13, 2007).

<sup>2635</sup> Ex. 1009 (Buettell E-Mail, dated December 19, 2007).

<sup>2636</sup> Examiner's Sworn Interview of Daniel Petrik, July 8, 2010, at 130:7-131:4.

<sup>2637</sup> *Id.* at 19:18-20:2. *See also id.* at 23:8-11 ("I stayed very involved through closing of Step 2 [and] I am also now responsible for monitoring the revolving line of credit and the relative risk to our institution.").

<sup>2638</sup> *Id.* at 146:19-22. *See also id.* at 124:2-9.

<sup>2639</sup> Ex. 927 (Leveraged Finance Committee Update Memo, dated August 3, 2007); Ex. 966 (Leveraged Finance Committee Update Memo, dated December 13, 2007).

apparently based on work done by BofA's Enterprise Valuation Group, and encompassed only Tribune's core business assets, not its investments in other businesses (like the Chicago Cubs).<sup>2640</sup> The calculated enterprise values on August 3, 2007 and December 13, 2007 were \$8.2 billion and \$12.3 billion, respectively.<sup>2641</sup> Total debt following Step Two was estimated on both dates to be \$12.233 billion.<sup>2642</sup> On its face, BofA's December 13, 2007 memo would appear to indicate a thin level of anticipated solvency following Step Two, but the Examiner is unable to ascertain the assumptions and calculations underlying the putative enterprise value. Moreover, BofA was aware that its participation in the Leveraged ESOP Transactions "deviate[d] from [BofA's] Leveraged Lending underwriting guidelines"<sup>2643</sup> and apparently was told at one point by EGI that the likelihood of obtaining a clean solvency opinion at Step Two was less than 50%.<sup>2644</sup>

**c. Financial Advisors at Step Two.**

**(1) Tribune's Financial Advisors: MLPFS and CGMI.**

Following the closing of the Step One Transactions, Tribune's advisors at each of MLPFS and CGMI substantially curtailed their involvement with Tribune. Both Michael Costa (who worked for MLPFS) and Christina Mohr (who worked for CGMI) stated to the Examiner that after the closing of the Step One Transactions each of them and their respective advisory groups "stepped back" from advising Tribune, although neither firm formally resigned from their

---

<sup>2640</sup> Examiner's Sworn Interview of Daniel Petrik, July 8, 2010, at 103:8-105:1.

<sup>2641</sup> Ex. 927 at BOA-TRB-0013163 (Leveraged Finance Committee Update Memo, dated August 3, 2007); Ex. 966 at BOA-TRB-0007609 (Leveraged Finance Committee Update Memo, dated December 13, 2007).

<sup>2642</sup> Ex. 927 at BOA-TRB-0013164 (Leveraged Finance Committee Update Memo, dated August 3, 2007); Ex. 966 at BOA-TRB-0007611 (Leveraged Finance Committee Update Memo, dated December 13, 2007).

<sup>2643</sup> Ex. 985 at BOA-TRB-0001261 (Hagel E-Mail, dated July 10, 2007).

<sup>2644</sup> Ex. 986 (Hagel E-Mail, dated October 17, 2007) (referring to a prior EGI estimate: "EGI estimates the probability of a clean solvency opinion for Step 2 at 80% vs. their previous estimate of less than 50%.").

advisory engagements.<sup>2645</sup> Nevertheless, there clearly was contact between each of them and Tribune's management following the closing of the Step One Transactions and before the closing of the Step Two Transactions, as discussed below.<sup>2646</sup>

When asked why this occurred, Mr. Costa explained that in or around the summer of 2007, Merrill was concerned about potential conflicts of interest or the appearance of conflicts of interest between the roles of the Merrill Entities as advisors and as lenders. According to Mr. Costa, there were certain conditions to MLCC funding the Step Two Financing, including a solvency-related requirement, and if there were a difference of opinion between MLCC and Tribune regarding the satisfaction of any of those conditions, it was Merrill's view that it would not be appropriate to have an advisor from MLPFS advising Tribune. Mr. Costa explained that the decision to "step back" was Merrill's decision, not a personal decision by Mr. Costa.<sup>2647</sup>

Mr. Costa acknowledged that he continued to confer with Tribune's management from time to time, although he states that he did not personally attend Tribune Board meetings or provide advice to Tribune. In one e-mail from Mr. Costa to his counterpart on the Merrill lending side, Todd Kaplan, Mr. Costa relayed management's description of an October 17, 2007 Tribune Board meeting, in which it was reported to Mr. Costa that the Step Two Transactions were on course to close in mid-November or early December 2007. Mr. Costa also noted to Mr. Kaplan: "Not sure solvency issue got [a lot] of focus. . . . Todd where are we in thinking thru solvency issue if company's advisor thinks solvent but we think otherwise?"<sup>2648</sup> The

---

<sup>2645</sup> Examiner's Interview of Michael Costa, June 4, 2010; Examiner's Interview of Christina Mohr, June 29, 2010.

<sup>2646</sup> Examiner's Interview of Michael Costa, June 4, 2010; Examiner's Interview of Christina Mohr, June 29, 2010.

<sup>2647</sup> Examiner's Interview of Michael Costa, June 4, 2010.

<sup>2648</sup> Ex. 989 (Costa E-Mail, dated October 17, 2007).

Examiner did not identify evidence, however, indicating that Mr. Costa or his advisory group at Merrill provided advice to Tribune or the Tribune Board on the issue of solvency.

The level of involvement by CGMI's advisors with Tribune following the closing of the Step One Transactions and before the closing of the Step Two Transactions is similar in many respects. According to Ms. Mohr, CGMI stopped advising the Tribune Board after the Step One Transactions closed. She acknowledged, however, that her advisory group—particularly Rosanne Kurmaniak—continued to assist management during this period with some scenario analysis.<sup>2649</sup> As noted, Ms. Kurmaniak and the CGMI advisory group were principally responsible for maintaining the financial projection models that had been used at various times to advise Tribune and develop information to provide to the Lead Banks (including Citigroup). It also appears that members of CGMI's advisory group (and Citigroup's lending group) participated in at least one telephone call with management regarding Tribune's post-Step One financial performance in July 2007.<sup>2650</sup>

Ms. Mohr could not recall whether she attended a due diligence session held in Chicago in October 2007, but she did acknowledge that she and some of her colleagues made one presentation to the Tribune Board, at the request of management, on October 17, 2007.<sup>2651</sup> Ms. Mohr indicated that CGMI had been asked by management to give a presentation to the Tribune Board regarding the financing markets.<sup>2652</sup> During the week before that meeting, her colleague Michael Canmann reported that he had gone through his script with "Don," who had no problems

---

<sup>2649</sup> Examiner's Interview of Christina Mohr, June 24, 2010.

<sup>2650</sup> See Ex. 994 (Kurmaniak E-Mail, dated July 3, 2007).

<sup>2651</sup> Examiner's Interview of Christina Mohr, June 24, 2010.

<sup>2652</sup> *Id.*

with it."<sup>2653</sup> Mr. Canmann also reported that he had made clear to "Don" that the presentation would be in an advisory capacity, and that CGMI would take no position "should negotiations take place."<sup>2654</sup> Ms. Mohr noted that this was a concern, in the event "the other side of the house," *i.e.*, Citigroup's lending group, had an "adversarial position."<sup>2655</sup>

The minutes for the October 17, 2007 meeting of the Tribune Board indicate that Mr. Canmann gave a presentation, with Ms. Mohr and Michael Schell in attendance, as well as Thomas Wayne and Paul Taubman of Morgan Stanley.<sup>2656</sup> When presented with the minutes of that meeting, Ms. Mohr advised the Examiner that she had not seen the minutes previously, and she did not agree that the minutes accurately reflected what happened (for instance, noting that Mr. Canmann "read a script"), characterizing them as someone's "spin" on what had occurred.<sup>2657</sup> In particular, Ms. Mohr noted that Mr. Canmann indicated in his presentation that the presentation was being given specifically at the request of the Tribune Board, and that the Citigroup Entities had a potentially adverse position (*i.e.*, as lenders)—points that are not reflected in the minutes.<sup>2658</sup>

---

<sup>2653</sup> Ex. 995 (Canmann E-Mail, dated October 12, 2007). Although it is highly likely that Mr. Canmann's reference to "Don" was Donald Grenesko, Senior Vice President/Finance and Administration of Tribune, it is uncertain from the e-mail and from Ms. Mohr's statements.

<sup>2654</sup> Ex. 995 (Canmann E-Mail, dated October 12, 2007).

<sup>2655</sup> Examiner's Interview of Christina Mohr, June 24, 2010.

<sup>2656</sup> Ex. 643 at TRB041566-67 (Tribune Board Meeting Minutes, dated October 17, 2007).

<sup>2657</sup> Examiner's Interview of Christina Mohr, June 24, 2010. The minutes themselves state, in pertinent part:

Mr. Schell then discussed the presentation from Citigroup regarding the debt market and Citigroup's possible need to cease providing advisory services to Tribune given its obligations to finance the second step of the leveraged ESOP transaction. Ms. Mohr and Mr. Wayne separately reviewed current equity and credit market conditions and an overview of the publishing and broadcasting sectors in the context of the Company's transaction. Mr. Wayne also commented on the Company's current operating outlook and expected leverage profile following the second step merger. Ms. Mohr and Mr. Wayne answered questions from the Board and following their reports, Mr. Zell departed due to a scheduling conflict and Messrs. Canmann and Schell and Ms. Mohr departed.

Ex. 643 at TRB041566-67 (Tribune Board Meeting Minutes, dated October 17, 2007).

<sup>2658</sup> Examiner's Interview of Christina Mohr, June 24, 2010.

Ms. Mohr also acknowledged that following the closing of the Step One Transactions she and her team made several presentations to Samuel Zell and EGI in an effort to garner future business from them.<sup>2659</sup> One of those presentations, on June 13, 2007, focused on Tribune's most recent results, the impact of those results, the possible impact on the Step Two Financing, and strategic alternatives, including asset sales.<sup>2660</sup> Another presentation, on June 28, 2007, focused on alternatives for the disposition of the WGN Superstation and the "Renaissance Cluster" assets.<sup>2661</sup> A third presentation, on July 28, 2007, discussed the condition of the leverage markets and strategic alternatives for Tribune.<sup>2662</sup> The Examiner is not aware, however, of evidence indicating that Ms. Mohr or her advisory group at CGMI provided advice following the closing of the Step One Transactions to Tribune or the Tribune Board on the issue of solvency.

**(2) The Special Committee's Financial Advisor: Morgan Stanley.**

With the decision by CGMI and MLPFS to "step back" from advisory roles in the face of potential conflicts between Tribune and the Lead Banks as the closing of the Step Two Transactions approached, only one financial advisor remained: Morgan Stanley. Indeed, in December 2007 Morgan Stanley asked the Special Committee for an additional, discretionary fee—beyond the \$10 million provided for in Morgan Stanley's engagement letter,<sup>2663</sup> all of which had been paid by May 9, 2007<sup>2664</sup>—in part because Morgan Stanley was the "[s]ole advisor to the Special Committee and the Company during key negotiations with the [Lead] Banks as part of the Step 2 financing, following resignation of the Company's initial advisors

---

<sup>2659</sup> *Id.*

<sup>2660</sup> Ex. 996 (Tribune Discussion Materials prepared for EGI, dated June 13, 2007).

<sup>2661</sup> Ex. 834 (Tribune Discussion Materials prepared for EGI, dated June 28, 2007).

<sup>2662</sup> Ex. 997 (Tribune Discussion Materials prepared for EGI, dated July 25, 2007).

<sup>2663</sup> Ex. 25 at MS\_00211 (Morgan Stanley Engagement Letter).

<sup>2664</sup> *See* Report at § III.E.4.e.(1).



(Merrill Lynch and Citi).<sup>2665</sup> The Special Committee denied Morgan Stanley's request for an additional fee, which essentially meant that Morgan Stanley received no compensation for work undertaken in connection with Step Two.<sup>2666</sup>

**(i) Interactions with Management.**

Notwithstanding Morgan Stanley's own description of having advised "the Company" and "the Company's Management" in negotiations with the Lead Banks in the fall of 2007, however, Morgan Stanley's sole client throughout its engagement was the Special Committee, not Tribune or Tribune's management.<sup>2667</sup> As a consequence, Tribune and its senior management were effectively acting without engaged financial advisors during a critical time period in the transaction. Tribune General Counsel Crane Kenney conveyed the challenge management faced in this regard when describing a late December 2007 conversation with Merrill's Todd Kaplan: "[A]t some point you don't know who is actually on your side. I don't know whether Todd was trying to queer the deal [or] whether he was supportive of the deal."<sup>2668</sup>

---

<sup>2665</sup> Ex. 1048 at MS\_69131 (Overview of Morgan Stanley's Role in the Tribune Special Committee Review Process, dated December 3, 2007). *See also* Ex. 1048 at 69133 (Overview of Morgan Stanley's Role in the Tribune Special Committee Review Process, dated December 3, 2007) ("During the Step 2 financing negotiations with the Banks, Morgan Stanley became sole advisor performing and presenting analyses to the Special Committee as well as the Company's Management, as the Company's financial advisors determined that they were no longer able to serve in an advisory capacity."). As explained below, despite these references to Morgan Stanley's serving as an advisor to Tribune, the Examiner found no other credible evidence that Tribune, as opposed to the Special Committee, ever retained Morgan Stanley as a financial advisor.

<sup>2666</sup> Examiner's Interview of Thomas Whayne, June 11, 2010.

<sup>2667</sup> Ex. 25 at MS\_00213 (Morgan Stanley Engagement Letter) ("Morgan Stanley will act under this letter agreement as an independent contractor with duties solely to the [Special] Committee."); Examiner's Sworn Interview of Thomas Whayne, July 2, 2010, at 33:8-14 ("Q: What's your understanding of who Morgan Stanley's client was? A: Our client was the special committee. Q: And that was your only client in this case? A: Yes."); Examiner's Sworn Interview of Paul Taubman, July 1, 2010, at 22:13-22 ("Q: The special committee was [Morgan Stanley's] client, is that right? A: The special committee was the client. Q: [W]as Tribune Company the client? A: No. Q: And was the board in general the client? A: No."). *See also* Examiner's Sworn Interview of Donald Grenesko, June 25, 2010, at 55:7-57:10.

<sup>2668</sup> Examiner's Sworn Interview of Crane Kenney, July 8, 2010, at 23:10-13. *See also* Ex. 959 at BOA-TRB-0001201A (Petrik Handwritten Notes, dated December 14, 2007) (reflecting the Lead Banks' internal deliberations, with Merrill "[n]ot 100%, but leaning to not fund" because Tribune may "not [be] a solvent company").

In December 2007, as "the [Lead Banks] were keeping their cards very close to the chest" and not "indicat[ing] to anyone that they were definitely going to fund,"<sup>2669</sup> Tribune management repeatedly attempted to turn to Morgan Stanley for advice. When VRC sought management's representation "that it is reasonable to assume [Tribune] will be able to refinance the new debt in 2014," Tribune Treasurer Chandler Bigelow told Tribune Senior Vice President/Finance and Administration Donald Grenesko that "we need Morgan Stanley."<sup>2670</sup> The next day, Thomas Whayne and Charles Stewart of Morgan Stanley participated in a telephone call concerning that issue and two others.<sup>2671</sup> On December 3, 2007, Mr. Bigelow sent Mr. Whayne "the backup for the [VRC] report," asking Mr. Whayne to "[take] a look at the comparable transactions/companies especially the newspaper peer company multiples."<sup>2672</sup> Similarly, on

---

<sup>2669</sup> Examiner's Interview of Charles Mulaney, June 24, 2010. According to Mr. Mulaney (outside counsel to the Special Committee), the Lead Banks "weren't making relationship speeches or sending out invitations to the closing dinner." *Id.*

<sup>2670</sup> Ex. 744 (Kenney E-Mail, dated December 2, 2007). The events that transpired concerning the refinancing assumption are discussed in detail elsewhere in the Report. *See* Report at § III.H.3.g.

<sup>2671</sup> Ex. 746 (Whayne E-Mail, dated December 2, 2007). Mr. Whayne reported to Mr. Taubman that Mr. Whayne and Mr. Stewart:

just finished a call with Dennis [FitzSimons], Don [Grenesko] and Chandler [Bigelow], who wanted to give us an update on the VRC process. VRC is scheduled to present to the [Tribune Board] on Tuesday with regards to their solvency analysis, and are having their final internal committee meeting at noon today. They called the company on Friday to discuss some committee pushback that they have received thus far.

First, they requested a [Tribune] management rep to the effect that it is reasonable to assume that the debt can be refinanced in 2014, and that the financial projections have been prepared by management in good faith. VRC also asked management to discuss this issue with advisors. Second, someone on the VRC committee expressed nervousness that Zell could exercise his option early and force the company to pay his associated taxes, which would be economically irrational and that the board could prevent—so, it appears that this is a mere misunderstanding. Finally, VRC wants management to review their analysis of the PV of tax savings associated with being an S-corp, which they put at approximately \$1 billion. This is consistent with the company's analysis, and in fact, the company has this analysis included as part of their rating agency and bank presentations.

*Id.*

<sup>2672</sup> Ex. 1049 (Bigelow E-Mail, dated December 3, 2007). In fact, the multiples VRC selected were heavily scrutinized by the Lead Banks days later when they reviewed VRC's December 4, 2007 preliminary solvency analysis. *See* Ex. 931 at ML TRIB 0406176 (Tuvlin E-Mail, dated December 7, 2007) (questioning "how can they defend the publishing multiples of 7.4x when the public comps trade in the 6x range," and noting that "comparable transactions in the context of few to none in the past year [make it] a challenge to understand their value here").

December 13, 2007, Mr. Bigelow suggested that Tribune ask "Morgan Stanley to give us a view of our [weighted average cost of capital calculation]." <sup>2673</sup>

As discussed elsewhere in the Report, <sup>2674</sup> Morgan Stanley appears to have provided information by, for example, participating in telephone calls with management concerning VRC's requests and furnishing precedent transactions that management ultimately used as a basis on which to make the refinancing representation to VRC. <sup>2675</sup> During his sworn interview with the Examiner, Mr. Wayne commented on those efforts as follows: <sup>2676</sup>

We had been asked to work with the special committee and in this final phase with management because the banks that had been advising primarily management during the first step transaction were no longer willing to serve in that capacity. So [from] the standpoint of actually helping them . . . make judgments [concerning] the capital markets [and] the right debt terms because they were in discussions with the creditors around . . . how to close the transaction on the debt documents, we were certainly helpful in that regard. . . .

On the other hand, as discussed previously, Mr. Wayne testified that he did not know whether the Special Committee or any of its members were aware of management's requests for Morgan Stanley's assistance or Morgan Stanley's responses, <sup>2677</sup> and a contemporaneous instant message communication appears to reflect Morgan Stanley's desire "to make this as little work as possible." <sup>2678</sup> Mr. Wayne also stated during his sworn interview with the Examiner that he

---

<sup>2673</sup> Ex. 1024 (Sachs E-Mail, dated December 13, 2007).

<sup>2674</sup> See Report at § III.H.3.g.(5).

<sup>2675</sup> Ex. 746 (Wayne E-Mail, dated December 2, 2007); Ex. 750 (Williams E-Mail, dated December 3, 2007); Examiner's Sworn Interview of Thomas Wayne, July 2, 2010, at 91:22-93:8; Examiner's Sworn Interview of Donald Grenesko, June 25, 2010, at 97:12-98:4.

<sup>2676</sup> Examiner's Sworn Interview of Thomas Wayne, July 2, 2010, at 25:6-18.

<sup>2677</sup> *Id.* at 27:1-11.

<sup>2678</sup> Ex. 1047 (Wayne Instant Message, dated December 14, 2007).

expressly declined Mr. Grenesko's requests for substantive assistance with the solvency matters on which the Lead Banks were focused:<sup>2679</sup>

[T]here were clearly conversations with Mr. Grenesko . . . where Don was looking for us very actively to help him with the work underlying his solvency for certificate. . . . He wanted us to go as far as to do the analysis for him and actually to do the addition . . . to prove that there was equity value. We categorically said no to that. . . .

There were a number of very tense discussions . . . but what I did tell Don [Grenesko] is I said, look, Don, we can provide you data for you guys to do whatever work you need to do, but we can't do the work for you. So if you want publicly available data around where high yield bond or leverage loans are trading, we can be helpful with providing that data in terms of precedent transactions. If you want us to update our work from our fairness opinion in terms of multiples, we'll provide that, but what we will not do is go beyond that. So we'll provide you facts, but not judgments.

In short, the record reflects that at a critical point in the Step Two closing process Tribune's management did not have a financial advisor to which to turn, and that members of management, including Mr. Grenesko and Mr. Bigelow, reached out for guidance to Morgan Stanley, the Special Committee's financial advisor. Morgan Stanley, however, was not engaged to provide financial advice to management, and offered relatively little assistance. Management was therefore largely unaided as the closing of the Step Two Financing Transactions approached and the solvency diligence questions posed by the Lead Banks became more pointed. It was in this context that Tribune's management appears to have used Morgan Stanley's alleged imprimatur to bolster conclusions and analyses that management and/or VRC reached in connection with the refinancing assumption set forth in VRC's Step Two solvency opinion.<sup>2680</sup>

---

<sup>2679</sup> Examiner's Sworn Interview of Thomas Whyne, July 2, 2010, at 95:4-96:13.

<sup>2680</sup> See Report at § III.H.3.g.

**(ii) Interactions with the Special Committee.**

Morgan Stanley's client—the Special Committee—met only one time after the Step One Financing Closing Date, on December 18, 2007.<sup>2681</sup> Unlike the Tribune Board meeting held that same day,<sup>2682</sup> there are no final, duly adopted minutes memorializing the Special Committee's proceedings on December 18, 2007, because the Special Committee never met again and never approved the draft minutes prepared by counsel.<sup>2683</sup> It appears that on that date, the Special Committee met for no more than fifteen minutes. The minutes of the full Tribune Board meeting reflect that the Special Committee meeting took place while the full Tribune Board meeting was in recess prior to its 3:00 p.m. adjournment,<sup>2684</sup> and the draft minutes of the Special Committee state that it "convened at 2:45 p.m."<sup>2685</sup>

What transpired between 2:45 p.m. and 3:00 p.m. on December 18, 2007 is a matter to which the Examiner was required to devote attention in light of the evidence adduced in the Investigation. The draft minutes prepared by the Special Committee's outside counsel (set forth in detail elsewhere in the Report)<sup>2686</sup> state that William Osborn, the Chair of the Special Committee, "requested that the representatives of Morgan Stanley comment on the solvency

---

<sup>2681</sup> Morgan Stanley made presentations to the Tribune Board (the membership of which largely overlapped with the Special Committee) following the Step One Financing Closing Date. *See, e.g.*, Ex. 643 (Tribune Board Meeting Minutes, dated October 17, 2007); Ex. 727 (Tribune Board Meeting Minutes, dated December 4, 2007); Ex. 726 (Tribune Board Meeting Minutes, dated November 5, 2007); Ex. 702 (Tribune Board Meeting Minutes, dated November 21, 2007).

<sup>2682</sup> Ex. 11 (Tribune Board Meeting Minutes, dated December 18, 2007).

<sup>2683</sup> Examiner's Interview of Charles Mulaney, June 24, 2010. The draft minutes prepared by counsel are unsigned, as are the final, duly adopted minutes of prior Special Committee meetings. Ex. 704 (Special Committee Meeting Minutes, dated December 18, 2007). *See, e.g.*, Ex. 143 (Special Committee Meeting Minutes, dated April 1, 2007).

<sup>2684</sup> Ex. 11 at TRB0415685-86 (Tribune Board Meeting Minutes, dated December 18, 2007).

<sup>2685</sup> Ex. 704 at TRB0533007 (Special Committee Meeting Minutes, dated December 18, 2007). The Special Committee meeting was likely even shorter, as the Tribune Board's minutes reflect that the full Tribune Board passed a resolution based on the Special Committee's recommendation and met in executive session for an undisclosed amount of time immediately prior to the Tribune Board's 3:00 p.m. adjournment. Ex. 11 at TRB0415686 (Tribune Board Meeting Minutes, dated December 18, 2007).

<sup>2686</sup> *See* Report at § III.G.1.

opinion and the analysis behind it that was just presented to the Board of Directors by VRC."<sup>2687</sup>

The draft minutes then purport to summarize remarks made by Mr. Wayne and Mr. Taubman of Morgan Stanley, allegedly culminating in the conclusion that "VRC's solvency analysis was conservative and that VRC's opinion was something upon which a director could reasonably rely."<sup>2688</sup> Specifically, Mr. Wayne was reported to have:<sup>2689</sup>

- "indicated that the analysis by VRC seemed thorough and appropriate,"
- "noted [that VRC's] earnings and termination value multiples for the publishing and broadcasting industries [were] consistent (but not identical) with those used by Morgan Stanley as well as Merrill Lynch and Citibank in previous advice to the Board of Directors,"
- observed that "VRC's selection of precedent transactions and its discounted cash flow analysis used metrics very similar to that previously used by each of the investment banks,"
- "commented on VRC's analysis of the net present value of [the anticipated S Corporation/ESOP] tax savings, [including the discount rate],"
- "commented on VRC's valuation of the PHONES debt and other assets and liabilities of the Company," and
- "concluded that VRC's solvency analysis was conservative and that VRC's opinion was something upon which a director could reasonably rely."

Mr. Taubman was reported to have "reiterated the conservative nature of VRC's analysis," and to have "stated that the Company has additional value not represented in the VRC presentation because the Company has a number of different assets and businesses that readily

---

<sup>2687</sup> Ex. 704 at TRB0533007 (Special Committee Meeting Minutes, dated December 18, 2007).

<sup>2688</sup> *Id.*

<sup>2689</sup> *Id.*

could be sold for fair value and that this additional financial [flexibility] is of incremental value to a company."<sup>2690</sup>

Mr. Wayne described his and Mr. Taubman's December 18, 2007 remarks to the Special Committee during his interview with the Examiner. According to Mr. Wayne: "We were asked questions about assumptions being reasonable. We sort of observed they used same comps [and] analyses that we had seen, and that was as far as we would go."<sup>2691</sup> Mr. Wayne stated that he and Mr. Taubman "[c]ompared multiples we'd used . . . back in March [and] April" to VRC's multiples, and also "compared projections [and] multiples they were using to the comps our comps were trading at to see if they were reasonable to that point in time," primarily using ratios of enterprise value to EBITDA.<sup>2692</sup> Finally, with regard to the *process* by which VRC reached its conclusions, Mr. Wayne stated that he indicated to the Special Committee that VRC's work "seemed thorough and appropriate" and appeared to be something the Special Committee "could take [a] level of comfort in" in determining that Tribune had satisfied the Merger Agreement's condition precedent of an independent solvency opinion.<sup>2693</sup> Similarly, Mr. Taubman stated that his use of the adjective "conservative" or "not aggressive" referred to "one specific aspect of [VRC's] analysis where they could have been more aggressive and they were not and I recall pointing that out to the members of the committee. . . . [VRC] had not assumed that if need be individual assets could be sold piece by piece."<sup>2694, 2695</sup>

---

<sup>2690</sup> *Id.*

<sup>2691</sup> Examiner's Interview of Thomas Wayne, June 11, 2010.

<sup>2692</sup> *Id.*

<sup>2693</sup> *Id.*

<sup>2694</sup> Examiner's Sworn Interview of Paul Taubman, July 1, 2010, at 84:21-85:8. *See also id.* at 111:7-11 ("I said that as it relates to this one dimension of the analysis they did—I either said on this one aspect they were not aggressive or on this one assumption there was a degree of conservatism.").

<sup>2695</sup> Examiner's Interview of Thomas Wayne, June 11, 2010.

During his interview with the Examiner, Mr. Wayne stated that neither he nor Mr. Taubman offered any opinion or conclusion concerning the substantive merits of VRC's solvency opinion, nor did he or Mr. Taubman tell the Special Committee they could reasonably rely on the fact that Tribune would be solvent after Step Two.<sup>2696</sup> To the contrary, according to Mr. Wayne, the remarks made by him and Mr. Taubman went solely to whether the work done by VRC was in compliance with the solvency opinion condition precedent of the Merger Agreement.<sup>2697</sup>

[W]e were not in any way shape or form speaking to the substance of the solvency opinion. . . . The board completely understood that we weren't speaking to whether the company was solvent from a substance matter [nor] were we saying whether this opinion was right or wrong. All we were staying was from a process stand point of fulfilling the condition the board could rely on the opinion for process not substance.

Mr. Wayne reiterated his earlier statements during his subsequent sworn interview with the Examiner:<sup>2698</sup>

- Q: Do these minutes accurately reflect the statements that you made at the special committee meeting on December 18th, 2007?
- A: From the standpoint of us making observations around their earnings and termination value multiples, yes. From the statement about us, about the precedent transactions and a discount cash flow used metrics similar to what each of the investment banks had used in step 1, yes. [T]hat they use the net present value of [the] tax savings the way that the banks had done and the rating agencies had done, I remember that. Yeah, I mean the discount rates at the bookend, yes, I'm sure I said that. . . . This line about using either of these analyses VRC found solvency after giving effect of the merger, I don't, I don't recall saying that. . . . The notion that I commented on the fact that they, the way

---

<sup>2696</sup> *Id.*

<sup>2697</sup> *Id.*

<sup>2698</sup> Examiner's Sworn Interview of Thomas Wayne, July 2, 2010, at 127:13-131:22.



they valued the phones debt and other assets and liability, yes, I made a comment on that. And the conclusion that the solvency analysis was conservative, I absolutely did not say that. And that the board could rely on it, [I] did not say that. . . .

Just to expound on one thing, . . . conservatism was the fact that there was no assumption that the company—there was no assumption as part of the analysis that the company was making any asset sales. So I do remember that Paul made an observation that they could sell asset sales if there was—if they had liquidity issues and that was not part of VRC's analysis, but that addressed liquidity. . . . I don't think Paul said that the nature of the analysis—he didn't say the analysis was conservative, but Paul did make the comment that there is additional value not represented in the presentation because the company has assets and business that it could sell if it got into duress . . . that the VRC analysis did not incorporate any analysis of potential asset sales as a way of dealing with potential liquidity issues and Paul did make the observation that that from the standpoint of viewing liquidity issues only was conservative.

With regard to the Special Committee's ability to rely on the process VRC undertook to as satisfying the Merger Agreement's independent solvency opinion condition precedent, Mr. Wayne testified:<sup>2699</sup>

Q: The last time that we spoke you made [a] statement to the effect of you may not have used these words, but . . . your presentation may have given the special committee comfort that it could rely on the process that VRC followed. . . . Could you explain that again for us, please.

A: [T]he line we tried to walk was to say that the analyses that they used are conventional. The methodologies that they've used . . . are standard and that they were thorough from a standpoint of all the normal analyses that you would expect a bank to use and that we, Citi and Merrill had used as part of our fairness opinion, but going beyond that to say you can rely on this, I don't believe we said that. . . .

I think all the special committee members understood that

---

<sup>2699</sup> *Id.* at 134:16-137:8.

we were not providing a solvency opinion or judgments around solvency. . . . [T]hey would have understood that by the fact that we were, we were being asked to merely make comments on VRC's analysis and that they were fairly high level observations and that we had put no analysis in front of them. I mean a reasonable special committee member given the fact that we had been in front of the many, many, many times with exhaustive analyses that underlie that fairness opinion and these are all expert—these are all board members that have served on many, many boards, they would have understood or they should reasonably have understood that by virtue of the fact that we had provided no analysis as part of this presentation that we were making absolutely no, you know, statements regarding, you know, solvency other than to make selective observations.

Mr. Taubman's testimony during his interview with the Examiner was similar:<sup>2700</sup>

[W]e were invited to the meeting and . . . there was a general opportunity for us to give our impressions afterwards and that seems to be corroborated [by the statement in the draft Special Committee minutes] that they requested that we comment on what we just had heard along with them. And I do recall albeit vaguely that Tom was trying to compare and contrast the cases and the discount rates that were being used by VRC with what others had come up with as operating cases of what other advisors had used for discount rates. I have a general recollection of that.

Mr. Taubman testified that he does not recall Mr. Wayne commenting on the reasonableness of VRC's solvency opinion at the Special Committee meeting, and Mr. Taubman is "more than doubtful" that Mr. Wayne characterized VRC's solvency opinion as "conservative."<sup>2701</sup>

In sum, although there appears to be no question that Mr. Wayne and Mr. Taubman offered brief, oral observations at the December 18, 2007 Special Committee meeting concerning

---

<sup>2700</sup> Examiner's Sworn Interview of Paul Taubman, July 1, 2010, at 82:11-22.

<sup>2701</sup> *Id.* at 83:1-6.

the process by which VRC assessed Tribune's solvency at Step Two,<sup>2702</sup> both Mr. Wayne and Mr. Taubman emphatically dispute that they characterized VRC's ultimate opinion as "conservative." Neither Mr. Wayne nor Mr. Taubman had ever seen the draft Special Committee minutes prior to being interviewed by the Examiner,<sup>2703</sup> and others interviewed by the Examiner who were present during the December 18, 2007 Special Committee meeting had no specific, independent recollection of the term "conservative" being used by Morgan Stanley (although several individuals stated that they had no reason to question the accuracy of the draft Special Committee meeting minutes).<sup>2704</sup>

Mr. Osborn described Morgan Stanley's role with respect to the VRC opinion as "mak[ing] certain that the solvency opinion was appropriate and made sense so that we would

---

<sup>2702</sup> Mr. Mulaney (outside counsel to the Special Committee) stated during his interview with the Examiner that Mr. Osborn merely wanted to ask Mr. Wayne and Mr. Taubman "if they had any comments" on VRC's solvency analysis, which prompted Mr. Mulaney to telephone Mr. Wayne several days before the meeting to tell him "that the Special Committee would like to hear Morgan Stanley's comments and views on VRC's solvency opinion and to the extent VRC has relied on different assumptions, I wanted them to highlight them and talk about them." Examiner's Interview of Charles Mulaney, June 24, 2010. *See* Examiner's Sworn Interview of Thomas Wayne, July 2, 2010, at 137:19-21 and 148:11-13 ("[W]e were asked by Chip Mulaney to make oral observations about VRC's presentation and that is all we did. . . . It was fairly short discussion. I can't imagine it went much beyond five-ish minutes."). By contrast, Morgan Stanley's formal presentation to the Special Committee in connection with the fairness opinion at Step One "probably took well over an hour." Examiner's Sworn Interview of Thomas Wayne, July 2, 2010, at 148:14-19.

<sup>2703</sup> Examiner's Interview of Thomas Wayne, June 11, 2010; Examiner's Sworn Interview of Paul Taubman, July 1, 2010, at 83:11-17.

<sup>2704</sup> Examiner's Sworn Interview of William Osborn, June 24, 2010, at 27:1-7 ("Q. Now, when you say they used the word 'conservative,' do you remember them saying that to you, or do you just remember reading that in the minutes? A. I don't -- one, for me to sit here and say I remember them saying it, I can't remember that. I did see it in the minutes."); Examiner's Sworn Interview of Dennis FitzSimons, June 25, 2010, at 101:7-18 ("Q. Do you have a specific recollection that [Morgan Stanley] approved VRC's solvency opinion as conservative and appropriate, or is that based on what you read[?] A. That's what I read [in the] board minutes, yes. Q. Aside from what you read in the board minutes, do you have any independent recollection that Morgan Stanley made that claim? A. No."). The author of the draft minutes stated to the Examiner that he believed the word conservative was used, but he has no specific recollection and bases his belief "on how these minutes are prepared." Examiner's Interview of Charles Mulaney, June 24, 2010. There is no evidence that the draft Special Committee meeting minutes were prepared prior to the actual meeting (as may have been the case with at least one other set of Special Committee minutes), and the December 2007 time records of the Special Committee's outside counsel reflect some work by counsel on the minutes the day following the December 18, 2007 Special Committee meeting.

have the confidence that . . . we could move forward with the second step,"<sup>2705</sup> a characterization with which Mr. Wayne agreed.<sup>2706</sup> This type of evaluation is qualitatively different from the type of evaluation VRC made with respect to Tribune's solvency and capital adequacy. Moreover, Morgan Stanley was not asked to look at Tribune management's post-Step One financial projections,<sup>2707</sup> the good faith and reasonableness of which are a foundation of VRC's solvency analysis.<sup>2708</sup> Whether or not Mr. Wayne or Mr. Taubman described VRC's Step Two solvency opinion as "conservative" in their oral observations at the December 18, 2007 Special Committee meeting, the record reflects, and the Examiner concludes, that Morgan Stanley was not asked to, nor did it, undertake or present a comprehensive evaluation of VRC's Step Two solvency opinion.

#### **5. Knowledge and Actions of the Large Stockholders in Connection with the Step Two Transactions.**

Following the completion of the Step One Transactions, the activities of the Large Stockholders<sup>2709</sup> were significantly more limited, particularly given the Chandler Trusts' disposition of all of their remaining Tribune Common Stock by June 7, 2007.<sup>2710</sup> Indeed, the

---

<sup>2705</sup> Examiner's Sworn Interview of William A. Osborn, June 24, 2010, at 26:11-14.

<sup>2706</sup> Examiner's Sworn Interview of Thomas Wayne, July 2, 2010, at 151:1-18.

<sup>2707</sup> *Id.* at 151:19-22.

<sup>2708</sup> *See* Ex. 267 at TRB0412757 (VRC Engagement Letter, dated April 11, 2007) (requiring that financial forecasts and projections provided to VRC must "have been prepared in good faith . . . based upon assumptions that, in light of the circumstances under which they are made, are reasonable").

<sup>2709</sup> Although the Report refers to the Chandler Trusts and the McCormick Foundation collectively as the Large Stockholders, as described previously, following completion of the Step One Transactions, the Large Stockholders possessed significantly fewer shares of Tribune Common Stock because the Chandler Trusts had disposed of their entire holdings through a combination of the Tender Offer and their block trade underwritten by Goldman Sachs and the McCormick Foundation held 11.8 million shares of Tribune Common Stock, representing approximately 10% of the total shares of Tribune Common Stock outstanding. *See* Report at § III.E.5.

<sup>2710</sup> *See* Report at § III.F.3.

only notable activity by the Large Stockholders during the Step Two Transactions took place in connection with the Merger.

**a. The Company Meeting.**

On July 13, 2007, Tribune provided notice of the August 21, 2007 Company Meeting to approve the Merger.<sup>2711</sup> Only the holders of record of Tribune Common Stock at the close of business on July 12, 2007, the record date for the Company Meeting, were entitled to notice and to vote at the meeting.<sup>2712</sup>

**b. The Merger Approval Process.**

The Foundation's Advisory Committee and the Foundation's Board each scheduled a special meeting on August 17, 2007, to discuss whether the McCormick Foundation should vote its shares of Tribune Common Stock in support of the Merger.<sup>2713</sup>

At the Foundation's Advisory Committee special meeting, Blackstone, Katten, and Q&B gave presentations on previously submitted reports and opinions with respect to various financial and legal aspects of the Merger.<sup>2714</sup> First, Blackstone discussed the terms of the Merger Agreement, reviewed the share price of the Tribune Common Stock, and concluded that the Merger price of \$34.00 per share was fair to the McCormick Foundation from a financial standpoint.<sup>2715</sup> Second, Katten reviewed its memorandum to the Foundation's Advisory Committee describing benefits that would be granted to certain Tribune officers in the form of a cash bonus pool, the 2007 Management Equity Incentive Plan, indemnification and insurance,

---

<sup>2711</sup> Ex. 226 at 2-3 (Proxy Statement, dated July 13, 2007).

<sup>2712</sup> *Id.*

<sup>2713</sup> Ex. 763 (Pitrof E-Mail, dated July 19, 2007).

<sup>2714</sup> Ex. 1112 (Foundation's Advisory Committee Meeting Minutes, dated August 17, 2007).

<sup>2715</sup> *Id.* at 2.

stock options, restricted stock, and transitional compensation plans.<sup>2716</sup> Finally, Q&B provided a detailed review of its draft legal opinion in which it concluded that the proposed decision of the Foundation's Board to vote the McCormick Foundation's shares of Tribune Common Stock in favor of the Merger was in compliance with applicable law and approval for the Merger would not jeopardize the McCormick Foundation's tax exempt status.<sup>2717</sup> Thereafter, the Foundation's Advisory Committee approved a recommendation to the Foundation's Board to authorize a vote of the Tribune Common Stock owned by the McCormick Foundation in favor of the Merger.<sup>2718</sup>

At its special meeting, the Foundation's Board, including Mr. FitzSimons, also heard reports and presentations by Blackstone, Katten, and Q&B on the Merger.<sup>2719</sup> After the question and answer period, the Foundation's Advisory Committee submitted its report to the Foundation's Board and recommended that the McCormick Foundation vote the McCormick Foundation's shares of Tribune Common Stock in favor of the Merger.<sup>2720</sup> The Foundation's Board subsequently unanimously approved, including Mr. FitzSimons, the vote of all of the Tribune Common Stock owned by the McCormick Foundation in favor of the Merger.<sup>2721</sup>

Certain Parties contend that the McCormick Foundation committed to support the Merger starting at the commencement of the Step One Transactions and therefore had already agreed to vote in favor of the Merger at the time it was announced. As noted above, however, the record is

---

<sup>2716</sup> *Id.*

<sup>2717</sup> *Id.* at 3.

<sup>2718</sup> *Id.*

<sup>2719</sup> Ex. 768 at 19-21 (McCormick Foundation Board Meeting Minutes, dated August 17, 2007).

<sup>2720</sup> *Id.* at 20-21.

<sup>2721</sup> *Id.* at 21.

clear that the Foundation's Board did not determine to vote all of the Tribune Common Stock owned by the McCormick Foundation in favor of the Merger until August 17, 2007.<sup>2722</sup>

The McCormick Foundation later concluded its Merger approval process by obtaining certain investment opinions,<sup>2723</sup> including an opinion issued by Advisory Research, dated as of August 17, 2007, stating that the terms of the Merger represented fair value to the McCormick Foundation.<sup>2724</sup>

**c. The Merger Closing.**

After the Merger was approved at the Company Meeting, the McCormick Foundation's activities were limited to monitoring media coverage related to Tribune and the McCormick Foundation.<sup>2725</sup> The McCormick Foundation was kept informed by Tribune's senior management as to the continued expectation for the Merger to close by the end of the year.<sup>2726</sup> With that in mind, on December 14, 2007, the McCormick Foundation cancelled its media coverage subscription.<sup>2727</sup> On December 20, 2007, Tribune announced the consummation of the Merger.<sup>2728</sup>

**6. Knowledge and Actions of the Zell Group in Connection with the Step Two Transactions.**

This section focuses on the Zell Group and its communications and interactions:

(a) internally regarding the closing of the Step Two Transactions and related solvency issues,

---

<sup>2722</sup> *Id.*; Ex. 1113 at 4 (Unanimous Written Consent of Directors of the McCormick Foundation Board, dated August 17, 2007).

<sup>2723</sup> Ex. 772 (Chomicz E-Mail, dated September 11, 2007).

<sup>2724</sup> Ex. 1001 (Advisory Research Opinion Letter, dated August 17, 2007).

<sup>2725</sup> Ex. 775 (Maynes E-Mail, dated September 28, 2007); Ex. 776 (Maynes E-Mail, dated October 5, 2007); Ex. 777 (Maynes E-Mail, dated November 2, 2007); Ex. 778 (Maynes E-Mail, dated December 13, 2007).

<sup>2726</sup> Ex. 779 at 2 (McCormick Foundation Meeting Minutes, dated October 9, 2007); Ex. 780 at FOUN0009915 (McCormick Foundation Investment Committee Meeting Minutes, dated November 13, 2007).

<sup>2727</sup> Ex. 781 (Wander E-Mail, dated December 14, 2007).

<sup>2728</sup> Ex. 782 (Tribune Press Release, dated December 20, 2007). *See* Report at § III.G.4.a.

(b) with Tribune management before the closing of the Step Two Transactions, and (c) with Tribune's investment bankers and the Lead Banks leading up to the closing of the Step Two Transactions.

**a. Internal Zell Group Communications Regarding the Closing of the Step Two Transactions and Solvency Issues.**

In late July 2007, William Pate directed Nils Larsen and Chris Hochschild to prepare an analysis of EGI's strategic options if Step Two failed to close, including a "full spin of broadcasting, spin of CB, and push[ing] debt to broadcasting."<sup>2729</sup> Mr. Pate stated that "the spin scenario is the better course given the operational complexities of the business and the risk of overleveraging these assets."<sup>2730</sup>

Nevertheless, Mr. Larsen was pushing for the Step Two Transactions to close and suggested that EGI undertake a restructuring analysis to determine "what changes to the deal structure can be put in place that allow closing but address the capital structure," such as reducing the per share price or adding an incremental asset sale bridge for another \$1.5 billion.<sup>2731</sup> Mr. Larsen argued further:<sup>2732</sup>

[T]he majority of our return is generated from the second phase. So while closing a bad deal is not the way to go, not closing the deal leaves us with a series of negatives that a cumbersome and time consuming spin/liquidation may not be the right way to proceed.

---

<sup>2729</sup> Ex. 783 at EGI-LAW 00114068-00114072 (Pate E-Mail, dated July 25, 2007). In his interview with the Examiner, Mr. Larsen repeatedly stated his belief that EGI did not have an unfettered right to terminate the Leveraged ESOP Transactions before the closing of the Step Two Transactions. Examiner's Interview of Nils Larsen, June 15, 2010. Mr. Pate, by contrast, seemed to believe that EGI had the option not to proceed with Step Two. Internal EGI communications are equivocal on this issue. In a July 25, 2007 e-mail from Mr. Larsen to Mr. Pate, Mr. Larsen stated: "The spin analysis along with a reconstituted transaction at a lower price will be ready for discussion at the end of the week or early next week. It will not take a week, let alone two. If we decide not to hit Phase II our FCC risk goes away and we can get moving ASAP." Ex. 783 at EGI-LAW 00114068 (Pate E-Mail, dated July 25, 2007).

<sup>2730</sup> Ex. 783 at EGI-LAW 00114068 (Pate E-Mail, dated July 25, 2007).

<sup>2731</sup> *Id.* at EGI-LAW 00114072.

<sup>2732</sup> *Id.*



In his interview with the Examiner, Mr. Larsen denied that he and Mr. Pate had divergent opinions about whether to close the Step Two Transactions.<sup>2733</sup> Mr. Larsen stated that he did not think that either he or Mr. Pate "had made a determination of which was the way to go," but were just trying to analyze the trends so they were not "caught unaware."<sup>2734</sup> Mr. Larsen told the Examiner:<sup>2735</sup>

We didn't look at not doing step 2. It wasn't really our decision. The majority of it—\$250 million—had already been invested. We had an obligation with limited conditions to make the balance of the investment. Absent something we could have pointed to, we couldn't get out of the transaction. If the deal hadn't closed we were going to be investors.

Conversely, in his interview with the Examiner, Samuel Zell expressed personal concerns over whether Step Two would close:<sup>2736</sup>

[W]hen the first step closed, I thought the chances of getting the second stage closed were pretty high. As the months [passed], my belief in it materially decreased. One week, the stock was trading at 27, the next week . . . someone was taking 34. I tried to get everyone to listen to me. Here we are, it was indicative of where the markets were at the time, panic was in the air.

On August 1, 2007, Mr. Hochschild prepared a leveraged buyout transaction model with the spin analysis requested by Mr. Pate. Mr. Hochschild made the following two assumptions as part of the spin analysis: Step Two "does not take place" and "EGI pays the \$25mm break-up fee."<sup>2737</sup> Mr. Hochschild concluded that "the returns under this initial Spin scenario are significantly worse . . . than under the current [leveraged buyout transaction] scenario."<sup>2738</sup> Mr.

---

<sup>2733</sup> Examiner's Interview of Nils Larsen, June 15, 2010.

<sup>2734</sup> *Id.*

<sup>2735</sup> *Id.*

<sup>2736</sup> Examiner's Interview of Sam Zell, June 14, 2010.

<sup>2737</sup> Ex. 784 (Hochschild E-Mail, dated August 1, 2007).

<sup>2738</sup> *Id.*

Hochschild pointed to Tribune's tax status as a cause of the lower returns on the spin scenario.<sup>2739</sup>

One day later, Mr. Hochschild prepared a revised spin and asset sale model that refined the asset sale structure and certain tax assumptions.<sup>2740</sup> Notwithstanding the revised analysis, Mr. Hochschild again concluded that the ten-year returns under the spin scenario were worse than under the leveraged buyout transaction scenario.<sup>2741</sup>

In a confidential memorandum to Mr. Zell, dated August 9, 2007, Mr. Pate warned that EGI must be "prepared to respond if the second step of the go-private transaction falters, due to market uncertainty or otherwise."<sup>2742</sup> He further stated: "I also think we should review our financial forecast with a very skeptical eye and consider whether we fully support the second step of the go-private transaction in light of recent financial shortcomings."<sup>2743</sup>

From Mr. Pate's perspective, the issue of Tribune's solvency was tied closely to the question of closing the Step Two Transactions. Mr. Pate voiced concern regarding Tribune's solvency in his August 9, 2007 confidential memorandum to Mr. Zell, warning that Mr. FitzSimons did not appear to be taking the issue seriously: "We need to be absolutely sure the company is solvent before completing the transaction. Dennis is not focused on the solvency of this deal, and that is one of the key reasons why we are making a mistake in not acting immediately to change management."<sup>2744</sup>

In his interview with the Examiner, Mr. Zell denied the existence of any such concern at the time: "We weren't even concerned. . . . [A] solvency opinion doesn't do shit for me. . . .

---

<sup>2739</sup> *Id.*

<sup>2740</sup> Ex. 785 (Hochschild E-Mail, dated August 2, 2007).

<sup>2741</sup> *Id.*

<sup>2742</sup> Ex. 786 at EGI-LAW 00178270 (Pate Memorandum, dated August 9, 2007).

<sup>2743</sup> *Id.*

<sup>2744</sup> *Id.*

Cash flow is all we care about."<sup>2745</sup> Mr. Larsen echoed Mr. Zell's assertion that EGI would not be focused on any "solvency test in a classical sense," but instead would be focused on liquidity.<sup>2746</sup> Additionally, Mr. Larsen denied any involvement in the VRC solvency analysis, although he acknowledged that EGI tried to educate itself about the solvency process.<sup>2747</sup> In his interview with the Examiner, JPM's Brit Bartter confirmed that although there was a "concern" about Tribune's solvency, "Zell wanted to do this deal – he's pumped to do this deal."<sup>2748</sup>

EGI was not directly involved in the VRC solvency analysis process. On September 12, 2007, Chandler Bigelow forwarded to Mr. Larsen the schedule for upcoming due diligence sessions with the Lead Banks and VRC.<sup>2749</sup> In internal discussions of the proposed schedule, Mr. Larsen recommended participating in the Lead Bank due diligence process, but not the VRC due diligence process, as "duplicative and more remedial."<sup>2750</sup> Nevertheless, EGI retained its own advisor, CRA, to consult on solvency issues.<sup>2751</sup>

In his sworn interview with the Examiner, Mr. Larsen stated that EGI retained CRA because EGI felt that it lacked in-house expertise on the solvency process "and with the second

---

<sup>2745</sup> Examiner's Interview of Samuel Zell, June 14, 2010.

<sup>2746</sup> Examiner's Interview of Nils Larsen, June 15, 2010. In a subsequent interview, Mr. Larsen said that EGI continued to assess Tribune's solvency by "pay[ing] close attention to the interactions with management, receipt of monthly financials . . . and also to work with . . . independent parties to look at how . . . we might improve the operations and to execute on our overall investment thesis." Examiner's Sworn Interview of Nils Larsen, July 7, 2010, at 28:16-29:2.

<sup>2747</sup> Examiner's Interview of Nils Larsen, June 15, 2010.

<sup>2748</sup> Examiner's Interview of Brit Bartter, June 16, 2010.

<sup>2749</sup> Ex. 787 at EGI-LAW 00127421 (Larsen E-Mail, dated September 12, 2007).

<sup>2750</sup> *Id.*

<sup>2751</sup> *See, e.g.*, Ex. 788 (Hochschild E-Mail, dated September 24, 2007); Ex. 789 (Hochschild E-Mail, dated October 6, 2007) (Mr. Hochschild inquiring of CRA: "As you guys go through the VRC model and make your changes. Can you keep a list of the 'errors' in their model or any discrepancies that you have with their model."); Ex. 790 at EGI-LAW 00147146 (Frizzell E-Mail, dated October 18, 2007); Ex. 791 at EGI-LAW 00175782 (Mayer E-Mail, dated December 7, 2007) (Mr. Larsen updating CRA: "We are making definitive progress on all fronts including solvency. VRC presented their oral views of the second step to the Board earlier this week and did not raise any reasons for concern.").

step and VRC doing its work and the knowledge that the banks were looking at this issue, we felt sort of under informed as to the process and, you know, we felt it was prudent to . . . increase our knowledge as to the process so that we could understand it better and [it] added some level of clarity."<sup>2752</sup> Mr. Larsen further noted that EGI shared with CRA some of the VRC models and preliminary detailed financial information on Tribune in order to "get CRA's informed opinion as to . . . what possible diligence and questions that Murray Devine would be asking and also to try to get a better understanding as to what the potential . . . view VRC may have and outcome."<sup>2753</sup> Mr. Larsen said that CRA did not issue a formal solvency opinion, but furnished advice on solvency issues:<sup>2754</sup>

I would not likely characterize it as an opinion because I don't believe they actually did the work that would lead to an official opinion. The sense that we got from the work was that . . . VRC would likely come back and indicate that the company would be solvent after the second step.

As noted, EGI was also aware that the Lead Banks had retained their own solvency expert, Murray Devine, and there was some concern that the move was designed to provide the Lead Banks with a potential "out" if the funding condition precedent of Tribune's solvency could be called into question. In his sworn interview with the Examiner, Mr. Larsen summarized these concerns:<sup>2755</sup>

Well certainly I'd say it was by hiring Murray Devine obviously that [the Lead Banks] were sensitive to that condition precedent and assessing it very closely. . . . I don't know where they felt they were on the continuum of whether that condition was going to be met or not, but certainly, you know, the idea that retaining someone who specializes in that type of service, the logical

---

<sup>2752</sup> Examiner's Sworn Interview of Nils Larsen, July 7, 2010, at 33:4-11.

<sup>2753</sup> *Id.* at 45:16-21.

<sup>2754</sup> *Id.* at 48:5-12.

<sup>2755</sup> *Id.* at 23:19-24:6.

conclusion was drawn that they were focused on that condition precedent.

Starting in late November through early December 2007, the Lead Banks submitted their solvency-related questions to Tribune which forwarded the questions to VRC.<sup>2756</sup> Although Mr. Larsen received a copy of the Lead Banks' initial due diligence questions, it does not appear from the documentary evidence that EGI participated in the VRC solvency due diligence process.<sup>2757</sup> In his interview with the Examiner, however, Mr. Larsen indicated that "we were certainly in contact with the company as to how the VRC process was going and whether there was any information that could be shared with regard to that process."<sup>2758</sup> On November 27, 2007, Chris Hochschild sent an e-mail to Gerald Spector regarding the solvency opinion: "VRC has completed their work and is 'prepared to deliver an opinion' to the board. . . . They have not said whether the opinion will be a positive one, but the fact that they completed the work quickly and have really given the company no signals of concern leads everyone to believe that we are fine on this front; but until the opinion actually comes, there is still a risk that we are not."<sup>2759</sup>

**b. The Extent of the Zell Group's Communications with Tribune Management Before the Closing of the Step Two Transactions.**

EGI began actively planning to assume control of Tribune on the closing of the Step Two Transactions shortly after the close of the Step One Transactions. The reactions of Tribune's management to EGI's attempts to assert control varied. Tribune's management was generally accommodating in response to EGI's requests relating to financial information and operating results, but was far less enthusiastic in response to EGI's attempts to participate in strategic decision-making before the closing of the Step Two Transactions.

---

<sup>2756</sup> Examiner's Sworn Interview of Donald Grenesko, June 25, 2010, at 132:5-8.

<sup>2757</sup> Ex. 792 (Kapadia E-Mail, dated November 8, 2007).

<sup>2758</sup> Examiner's Sworn Interview of Nils Larsen, July 7, 2010, at 26:3-6.

<sup>2759</sup> Ex. 793 (Hochschild E-Mail, dated November 27, 2007).

**(1) Communications Between EGI and Tribune Regarding Financial Information and Projections Before the Closing of the Step Two Transactions.**

After some initial hesitation about possible legal limitations on the ability to share information,<sup>2760</sup> Tribune routinely shared detailed financial and operational reports with EGI regarding both the Broadcasting Segment and the Publishing Segment, along with other financial records of the Tribune Entities.<sup>2761</sup> It appears that EGI reviewed the financial reports and did not hesitate to question Tribune about concerns it noted, such as downward trends in revenue or cash flow.<sup>2762</sup>

Mr. Hochschild used Tribune's financial information to prepare an internal EGI financial model showing Tribune management's current revenue and operating cash flow projections for 2007, along with his own operating assumptions regarding growth and decline in the various

---

<sup>2760</sup> Ex. 794 (Sotir E-Mail, dated June 8, 2007) ("Can you guys meet with the Trib finance team on Tuesday afternoon (June 12) to review Period 5 financials. They may show us their revised forecast, but are still [discussing] with lawyers what level of detail they can discuss."); Ex. 795 at EGI-LAW 00113215 (Larsen E-Mail, dated July 18, 2007) ("Attached are selected pages from the period 6 brown book for publishing that I am comfortable forwarding to you.").

<sup>2761</sup> The Publishing Segment provided EGI with financial reports on a regular basis such as Publishing Flash summaries, Brown Books for publishing by period, quarterly ad category reports, yearly capital and cost reduction plans. The Broadcasting Segment provided EGI with weekly pacing and category reports with a brief summary of revenue trends and general business conditions. EGI also received period and quarterly Flash reports from the interactive business, Brown Books, and press releases issued by Tribune reporting on revenues. *See, e.g.*, Ex. 796 (Hochschild E-Mail, dated June 4, 2007); Ex. 797 (Pate E-Mail, dated June 5, 2007); Ex. 798 (Hendricks E-Mail, dated July 16, 2007); Ex. 799 at EGI-LAW-00113453-00113454 (Larsen E-Mail, dated July 19, 2007); Ex. 795 (Larsen E-Mail, dated July 18, 2007); Ex. 800 at EGI-LAW 00106257 (Bigelow E-Mail, dated June 20, 2007); Ex. 801 (Hochschild E-Mail, dated August 20, 2007); Ex. 802 (Hendricks E-Mail, dated August 20, 2007); Ex. 803 (Sotir E-Mail, dated September 24, 2007); Ex. 804 (Pate E-Mail, dated October 10, 2007); Ex. 805 (Hendricks E-Mail, dated October 5, 2007); Ex. 806 (Hochschild E-Mail, dated October 8, 2007); Ex. 1039 (Hochschild E-Mail, dated November 12, 2007); Ex. 807 at EGI-LAW 00161133 (Hochschild E-Mail, dated November 15, 2007); Ex. 808 (Hendricks E-Mail, dated December 3, 2007); Ex. 1120 (Hochschild E-Mail, dated December 11, 2007).

<sup>2762</sup> Ex. 799 at EGI-LAW 00113453 (Larsen E-Mail, dated July 19, 2007) (commenting on advertising category reports forwarded by Tribune: "We need to understand the national fall-off and the trib real estate fall. There is plenty of grist for meetings with hillier and smith to push them on these particular items. Also, compare ad inches to revenues. There seems to be clear discounting taking place – maybe too much."); Ex. 795 at 00113215 (Larsen E-Mail, dated July 18, 2007); Ex. 803 (Sotir E-Mail, dated September 24, 2007) (commenting on Tribune forwarded Publishing Flash Summary from Period 9, Week 3: "It seems that retail is slowing down. Any idea why that is? I don't think we were anticipating it slowing down, right?"); Ex. 809 at EGI-LAW 00158927 (Hochschild E-Mail, dated November 13, 2007) ("Can you provide a little color to me on the broadcasting results for Period 10? Both revenues and OCF were well off versus 2006 . . . and the 2007 Plan.").

publishing divisions.<sup>2763</sup> Between August and December 2007, Mr. Hochschild regularly compared EGI's projections to the then-current projections in Tribune's five-year model, updated EGI's model, and sent internal EGI e-mails commenting when he thought one party or the other had been more aggressive in its projections.<sup>2764</sup> Mr. Larsen told the Examiner that he did not agree with management's approach to the interactive business:<sup>2765</sup>

[My] recollection is that they cast their net incredibly broadly and had many, many plans, opportunities, ideas that they were investing time and money into, and I think our view of the world was focusing on everything is focusing on nothing, and you really needed to create a business plan, a return on capital, to determine whether or not you're going to green light certain opportunities, and if you couldn't—if they didn't have a reasonable return on capital within a reasonable period of time, pursuing those was probably not time or money well spent. . . . I think our view would be that working on 120 different projects at the same time was not the best use of people's time and effort.

Mr. Larsen testified that "it would have been overstepping to try to indicate to management that we think their projections should be changed to reflect, you know, the way we think the world would be."<sup>2766</sup>

---

<sup>2763</sup> Ex. 810 at EGI-LAW 00119758-00119759 (Pate E-Mail, dated August 17, 2007).

<sup>2764</sup> Ex. 811 (Hochschild E-Mail, dated August 29, 2007); Ex. 812 (Hochschild E-Mail, dated September 27, 2007); Ex. 813 (Hochschild E-Mail, dated October 8, 2007); Ex. 814 (Hochschild E-Mail, dated December 6, 2007).

<sup>2765</sup> Examiner's Sworn Interview of Nils Larsen, July 7, 2010, at 56:14-57:10. After Mr. Larsen's interview, his counsel sent an errata sheet that offered the following addition to the testimony quoted above: "Initially, I recall that the projected Tribune interactive revenue associated with possible new investments was not very material to the overall analysis of Tribune's business." The corresponds with Mr. Larsen's comments during his initial interview with the Examiner:

It's helpful as you look at this, to consider the size of these interactive revenues compared to [the] overall picture and how significant they really are. My recollection is interactive didn't become a meaningful contributor until 2015 and out. I don't think they were over-aggressive on interactive. That didn't cause this problem.

Examiner's Interview of Nils Larsen, June 15, 2010. Mr. Larsen also told the Examiner that he did not believe there was any "ball hiding" by Tribune with respect to Tribune's financial projections generally. *Id.*

<sup>2766</sup> Examiner's Sworn Interview of Nils Larsen, July 7, 2010, at 58:20-59:1.

In August 2007, Tribune was in the midst of updating its 2007 operating plan to deliver to VRC for preparation of VRC's Step Two solvency opinion.<sup>2767</sup> The revised operating plan was to be based on the current 2007 projections and an updated five-year financial model.<sup>2768</sup> Mr. Bigelow solicited EGI's comments and input on Tribune's revised financial models and incorporated Mr. Larsen's comments into its updated five-year model.<sup>2769</sup> E-mail exchanges between Mr. Bigelow and Mr. Larsen in the fall of 2007 reflected an ongoing dialogue on modeling the downside scenarios to Tribune's five-year consolidated model, that Tribune would provide to the Lead Banks.<sup>2770</sup> Mr. Bigelow asked Mr. Larsen to review the sensitivities included in the model,<sup>2771</sup> and Mr. Larsen expressed his unhappiness with the inclusion of a downside sensitivity case based on the negative assumptions made in a Lehman Brothers report that Mr. Larsen described as "garbage."<sup>2772</sup> Mr. Bigelow also kept EGI advised regarding rating agency activities. For example, Mr. Bigelow forwarded a copy of Tribune's late-October 2007 rating agency presentation to Mr. Larsen,<sup>2773</sup> as well as copies of Moody's and Standard & Poor's draft press releases for comment.<sup>2774</sup>

---

<sup>2767</sup> Ex. 654 (Bigelow E-Mail, dated August 2, 2007).

<sup>2768</sup> *Id.*

<sup>2769</sup> Ex. 815 (Hochschild E-Mail, dated September 25, 2007). In his interview with the Examiner's counsel and financial advisor, Harry Amsden, Vice President Finance of Tribune Publishing Company indicated that he did not believe that the Zell Group had any involvement in the reforecasting process. Examiner's Interview of Harry Amsden, July 2, 2010.

<sup>2770</sup> See Ex. 816 (Larsen E-Mail, dated September 20, 2007); Ex. 817 (Larsen E-Mail, dated September 20, 2007); Ex. 818 (Larsen E-Mail, dated October 24, 2007). Mr. Larsen did not recall speaking with Tribune management regarding the funding of projects that were proposed to be undertaken by the Tribune Entities' interactive group. Examiner's Sworn Interview of Nils Larsen, July 7, 2010, at 57:11-58:2. Donald Grenesko similarly did not recall specifically discussing plans for the Tribune Entities' interactive group with Zell Group personnel. Examiner's Sworn Interview of Donald Grenesko, July 8, 2010, at 174:22-175:7.

<sup>2771</sup> Ex. 816 (Larsen E-Mail, dated September 20, 2007).

<sup>2772</sup> Ex. 817 (Larsen E-Mail, dated September 20, 2007).

<sup>2773</sup> Ex. 818 at EGI-LAW 00153635 (Larsen E-Mail, dated October 24, 2007).

<sup>2774</sup> Ex. 819 (Larsen E-Mail, dated November 29, 2007); Ex. 1040 at EGI-LAW 00189249 (Bigelow E-Mail, dated December 18, 2007).



On October 1, 2007, EGI participated in the underwriters' due diligence meeting attended by representatives from Tribune, the Lead Banks, and Murray Devine. At this meeting, Tribune presented, among other things, its updated financial model and consolidated operating sensitivities.<sup>2775</sup> Leading up to this meeting, EGI provided input into Tribune's financial model. For instance, Mr. Bigelow responded to Mr. Larsen's concerns about basing the downside case scenario on the figures used in the Lehman Brothers report by preparing an explanatory e-mail for the Lead Banks, and asked Mr. Larsen to review the e-mail.<sup>2776</sup> The next day, Mr. Larsen told Mr. Bigelow that he had additional comments to Tribune's financial model.<sup>2777</sup> Additionally, William Pate e-mailed Tribune's Ken DePaola and Doug Thomas before the October 1, 2007 underwriters' meeting and complimented them on the presentation they had prepared for the meeting, which EGI had obviously been allowed to preview.<sup>2778</sup> Mr. Pate also gave advice with regard to the questions that Tribune was likely to face from the Lead Banks.<sup>2779</sup>

Tribune consistently included EGI on its e-mails forwarding the latest versions of its financial model or other financial reports to the Lead Banks in preparation for the weekly due diligence conference calls.<sup>2780</sup> Not only did EGI receive the final versions of these documents, but EGI also had the opportunity to review drafts of the models before they were provided to the Lead Banks.<sup>2781</sup>

---

<sup>2775</sup> Ex. 820 (Jacobson E-Mail, dated September 29, 2007).

<sup>2776</sup> Ex. 816 (Larsen E-Mail, dated September 20, 2007).

<sup>2777</sup> Ex. 821 (Larsen E-Mail, dated September 21, 2007).

<sup>2778</sup> Ex. 822 (Pate E-Mail, dated September 29, 2007).

<sup>2779</sup> *Id.*

<sup>2780</sup> Ex. 823 (Bigelow E-Mail, dated October 5, 2007); Ex. 1041 (Chen E-Mail, dated October 16, 2007).

<sup>2781</sup> Ex. 824 (Sachs E-Mail, dated November 13, 2007).

**(2) EGI's Attempts To Participate In Strategic Decision-Making Before the Closing of the Step Two Transactions.**

Following consummation of the Step One Transactions, EGI also attempted to assert some control over Tribune's strategic decision-making processes in the period leading up to the Step Two Transactions. EGI's attempts in this regard were not well-received by Tribune management.

Shortly after the Step One Transactions closed, Mr. Pate traveled to Los Angeles to meet with managers of the Los Angeles Times to discuss operating results, new initiatives, and project development.<sup>2782</sup> Mr. Zell then tasked Randy Michaels, Mr. Zell's choice for Chief Operating Officer of Tribune, to draft a "first 100 day" action plan.<sup>2783</sup> Mr. Michaels also prepared a series of questions for managers of Tribune's various business units to assist him in evaluating both the business units and the managers.<sup>2784</sup> Mr. Michaels advised the EGI team that they needed to have "allies" inside "the Tower" and asked Mr. Pate, Mr. Larsen, Mark Sotir, and Gerald Spector to identify Tribune employees whom they believed could help in this regard.<sup>2785</sup> Mr. Larsen responded with a short list that included Mr. Bigelow.<sup>2786</sup>

Tribune management appears to have resisted EGI's efforts to participate actively in the strategic decision-making process at Tribune before the closing of the Step Two Transactions. The following exchanges are illustrative of this tension:

- Mr. FitzSimons told the Examiner that in the summer of 2007, Mr. Zell gave an "ambiguous answer at best" in response to a question from a group of Los Angeles

---

<sup>2782</sup> Ex. 783 at EGI-LAW 00114067 (Pate E-Mail, dated July 25, 2007).

<sup>2783</sup> Ex. 825 at EGI-LAW 00123664 (Pate E-Mail, dated August 29, 2007).

<sup>2784</sup> Ex. 826 at EGI-LAW 00127531 (Larsen E-Mail, dated September 13, 2007).

<sup>2785</sup> Ex. 827 (Larsen E-Mail, dated October 5, 2007).

<sup>2786</sup> *Id.*

Times reporters related to the Leveraged ESOP Transactions and who would be part of Tribune management following consummation of the Leveraged ESOP Transactions.<sup>2787</sup> Mr. FitzSimons further stated that "I told Sam in no uncertain terms that that wasn't acceptable because while I was running this company I was running this company and didn't need anybody undercutting me. It was a little bit more colorful than that."<sup>2788</sup>

- On September 18, 2007, Mr. Larsen and John Vitanovec of Tribune exchanged e-mails regarding the Tribune Entities' plans to shut down the television syndication business without first marketing the business to potential purchasers. Frustrated by the response he received, Mr. Larsen e-mailed Mr. Michaels and stated that EGI "[needed] to move quickly" before Tribune "take[s] apart a valuable asset."<sup>2789</sup>

- On September 28, 2007, Mr. Larsen e-mailed Mr. Vitanovec after he read that premiere episodes of two of the CW Network's new primetime series were going to be streamed free-of-charge on Yahoo TV.<sup>2790</sup> Mr. Larsen described this as a "disturbing and negative development," and asked Mr. Vitanovec if Tribune was involved in this decision.<sup>2791</sup> Again unhappy with the answers he received, Mr. Larsen responded: "[M]y concern runs to the fact that much of this seems to be happening to us as opposed to being a part of a regular and evolving dialogue. . . . At some point I would love to have an opportunity to get together and discuss this in more detail and spend time on the digital distribution experiments."<sup>2792</sup>

---

<sup>2787</sup> Examiner's Sworn Interview of Dennis FitzSimons, June 25, 2010, at 108:18-19.

<sup>2788</sup> *Id.* at 108:19-109:2.

<sup>2789</sup> Ex. 828 at EGI-LAW 00129322 (Larsen E-Mail, dated September 18, 2007).

<sup>2790</sup> Ex. 829 at EGI-LAW 00138604 (Larsen E-Mail, dated September 28, 2007).

<sup>2791</sup> *Id.*

<sup>2792</sup> *Id.* at EGI-LAW 00138603.

- When EGI was apprised of the Gannett-Metromix deal that was about to be publicly announced, Mr. Pate e-mailed Mr. Larsen and Mr. Michaels, stating: "We should discuss early tomorrow if we want to push back on the Gannett-Metromix deal. They plan to announce next Wednesday. Trib thinks it is a winner. I have my doubts but would like your advice."<sup>2793</sup>

- When Mr. Landon e-mailed EGI before the December 18, 2007 Tribune Board meeting with a list of subjects for discussion, Mr. Michaels immediately expressed his concerns:<sup>2794</sup>

My input would be to slow down what you can. For some reason, there is a great rush to get projects started before the change of control. This is backwards. . . . Finally, let's not let Tribune agree to ANYTHING that forecloses future options. We can participate in experiments we can get out of, but make sure we don't commit to exclusives or non-competes.

Although it appears that Tribune management included EGI in certain management-level discussions and provided it with relevant documents,<sup>2795</sup> Mr. Zell told the Examiner that Tribune management was not "enthusiastic" about the deal, and that Mr. FitzSimons refused to give Mr. Zell any power until after Step Two closed.<sup>2796</sup> For example, even though Mr. Zell was named to the Tribune Board in May 2007, Mr. Zell told the Examiner that his "instructions [from Mr. FitzSimons] were, you are on the Board, you sit on the Board. You don't sit on any committees. You don't have anything to do with it until it's a real deal."<sup>2797</sup> Additionally, Mr. Zell said that "FitzSimons sat in my office in December and said I'm not doing anything, I'm

---

<sup>2793</sup> Ex. 830 (Pate E-Mail, dated October 17, 2007).

<sup>2794</sup> Ex. 831 at EGI-LAW 00172384 (Michaels E-Mail, dated December 1, 2007).

<sup>2795</sup> Ex. 832 (Sotir E-Mail, dated October 27, 2007); Ex. 833 (FitzSimons E-Mail, dated December 6, 2007).

<sup>2796</sup> Examiner's Interview of Samuel Zell, June 14, 2010.

<sup>2797</sup> *Id.*

not giving you any power until it closes and I don't think it's going to close. I'm not moving, because I'm not moving. If it doesn't close then I'm still CEO."<sup>2798</sup> Mr. FitzSimons, however, denied that he did anything to frustrate or disrupt Mr. Zell's ability to plan for the transition, or that he refused any of Mr. Zell's requests in this regard.<sup>2799</sup> Mr. FitzSimons stated that his "recollection is that [he] tried to be again very helpful to Sam to let him know at all times the condition of the company, where there were issues, where we were doing well."<sup>2800</sup>

**c. EGI's Contact with the Financial Advisors and the Lead Banks in Connection with the Step Two Financing.**

In June and July of 2007, CGMI and EGI met to discuss various strategic options, including alternatives with respect to the WGN Superstation and a set of television stations referred to as the "Renaissance Cluster,"<sup>2801</sup> and overall plans for the remaining \$4 billion in financing in light of the then-current market conditions.<sup>2802</sup> Christina Mohr, a Managing Director of CGMI, told the Examiner that her message to the Zell Group in June 2007 was that "this Company should be selling assets to reduce risk around the transaction and to take [it] from achievable to prudent."<sup>2803</sup>

Following the closing of the Step One Transactions, EGI dealt with JPMCB as the spokesperson for the Lead Banks regarding possible changes to the terms of the Step Two Financing. EGI was approached by JPMCB with concerns about the ability of the Lead Banks to syndicate the Step Two Debt. Internal JPMCB e-mails expressed apprehension that JPMCB was

---

<sup>2798</sup> *Id.*

<sup>2799</sup> Examiner's Sworn Interview of Dennis FitzSimons, June 25, 2010, at 108:1-8.

<sup>2800</sup> *Id.* at 109:20-110:1.

<sup>2801</sup> Ex. 834 at 1 and 27-29 (EGI Tribune Discussion Materials, dated June 28, 2007).

<sup>2802</sup> Ex. 835 (Canmann E-Mail, dated July 26, 2007).

<sup>2803</sup> Examiner's Interview of Christina Mohr, June 29, 2010. Ms. Mohr further stated: "Part of the pitch is you should buy yourself some insurance, has nothing to do with whether the business is solvent at the time." *Id.*

"totally underwater on this underwrite"<sup>2804</sup> and that "this deal will fail without a lot more help from Zell."<sup>2805</sup> On July 26, 2007, James Lee of JPMCB met with Mr. Zell to discuss the status of the financing. On returning from this meeting, Mr. Lee sent an e-mail to colleagues at JPMCB expressing his satisfaction with Mr. Zell's responsiveness to JPMCB's concerns:<sup>2806</sup>

To his credit, he said he would do what was necessary to help us. We discussed him selling more assets, improving the yield, etc. etc. I also raised it would probably be helpful for him to be involved in the operations of the company to the extent permitted given the softness in the space and our need to have a strong story to sell. He couldn't have been more understanding of all the issues and willing to help.

Mr. Zell stated during his interview with the Examiner that, although he did not recall that specific meeting, such a meeting would not have been uncommon.<sup>2807</sup> Mr. Zell told the Examiner that he was not willing to raise the interest rates, put in more money, or do anything that would change the economics of the deal.<sup>2808</sup> Mr. Larsen corroborated Mr. Zell's position regarding EGI's unwillingness to modify the economics of the deal.<sup>2809</sup>

In anticipation of another meeting with Mr. Zell, on September 25, 2007, Yang Chen of JPMCB prepared a presentation for JPMCB senior management in which he outlined "[p]otential changes to deal terms."<sup>2810</sup> These changes included a commitment from Mr. Zell to sell additional assets and to contribute more equity, a "Most Favored Nation" clause for the Step Two

---

<sup>2804</sup> Ex. 836 (Lee E-Mail, dated July 26, 2007).

<sup>2805</sup> Ex. 837 (O'Brien E-Mail, dated July 26, 2007).

<sup>2806</sup> Ex. 836 (Lee E-Mail, dated July 26, 2007).

<sup>2807</sup> Examiner's Interview of Samuel Zell, June 14, 2010.

<sup>2808</sup> *Id.*

<sup>2809</sup> Examiner's Interview of Nils Larsen, June 15, 2010 ("If it changed the economics, we would not have been supportive of that. Because that is why we have a commitment letter.").

<sup>2810</sup> Ex. 841 at JPM\_00280816 and JPM\_00280821 (Chen E-Mail, dated September 19, 2007).

Lenders, and more fees payable at regular intervals until the documents governing the Step Two Financing were executed.<sup>2811</sup>

On October 15, 2007, Rajesh Kapadia of JPMCB requested a meeting with Mr. Larsen and Chandler Bigelow to discuss Step Two Financing issues.<sup>2812</sup> Immediately thereafter, Mr. Larsen forwarded this e-mail to William Pate, stating that he thought it would be hard to decline to participate.<sup>2813</sup> Mr. Pate responded: "I'd just take the meeting. listen to their comments and go from there. Sam has been expecting an ask from them since you met with them three weeks ago."<sup>2814</sup> Although he agreed to a meeting, Mr. Larsen cautioned Mr. Kapadia that "I am working under the assumption that your thoughts represent some mutually beneficial suggestions and will be presented as such."<sup>2815</sup>

Mr. Kapadia subsequently summarized the discussions for Mr. Lee, stating that he explained to Tribune and Mr. Larsen that "we are still losing money" and the Tribune Board should want a "market clearing deal and not leave a levered company with its underwriters stuffed."<sup>2816</sup> Additionally, Mr. Kapadia said that he discussed with EGI other proposed changes to the current financing terms, including conversations with Mr. Larsen about "Zell buying \$500mm of the bonds/bridge."<sup>2817</sup> In a follow-up call between Mr. Lee and Mr. Zell the next day, Mr. Zell advised Mr. Lee that he believed that JPMCB "asked for a lot with a lot of take and no give."<sup>2818</sup> JPMCB anticipated receiving a counteroffer from Mr. Zell or Tribune after the next

---

<sup>2811</sup> *Id.*

<sup>2812</sup> Ex. 842 at EGI-LAW 00145139 (Pate E-Mail, dated October 15, 2007).

<sup>2813</sup> *Id.*

<sup>2814</sup> *Id.*

<sup>2815</sup> Ex. 843 at JPM\_00333013-00333014 (Kapadia E-Mail, dated October 16, 2007).

<sup>2816</sup> Ex. 844 (Kapadia E-Mail, dated October 18, 2007).

<sup>2817</sup> *Id.*

<sup>2818</sup> Ex. 845 (Kapadia E-Mail, dated October 20, 2007).

Tribune Board meeting.<sup>2819</sup> Ultimately, EGI and Tribune agreed to reduce the amount to be borrowed in the Step Two Financing, eliminate the "structural flex" available to the Lead Banks, and adjust the terms of the high yield notes.<sup>2820</sup> Mr. Zell told the Examiner that this was "a perfect example of something we thought we could live with and it would reduce the debt service requirements, we didn't think that changed our economics materially."<sup>2821</sup>

On the eve of the closing of the Step Two Transactions, Mr. Zell remained optimistic, telling JPM's James Lee, " You have no idea how many things we're going to do to make this work."<sup>2822</sup> Indeed, according to JPM's Jamie Dimon even as Tribune approached bankruptcy, Mr. Zell still thought that the deal was going to work: "Sam until very late in the game thought he was going to make a lot of money on this."<sup>2823</sup>

## **I. Events Leading Up to the Bankruptcy Filings.**

### **1. Tribune Board Deliberations.**

Faced with debt service and related payments in December 2008 of approximately \$200 million (including \$69.5 million on the 5.67% Series E Medium-Term Notes due 2008),<sup>2824</sup> and another \$1.3 billion due in 2009, including \$512 million of the Tranche X Facility debt maturing in June 2009,<sup>2825</sup> the Tribune Board held a series of meetings in November and December 2008, during which time the Tribune Board, together with its financial advisors (including Morgan Stanley, engaged on November 13, 2008 to advise the Tribune Board),<sup>2826</sup>

---

<sup>2819</sup> *Id.*

<sup>2820</sup> Ex. 702 at TRIB0415673 (Tribune Board Meeting Minutes, dated November 21, 2007).

<sup>2821</sup> Examiner's Interview of Samuel Zell, June 14, 2010.

<sup>2822</sup> Examiner's Interview of James Dimon, June 25, 2010.

<sup>2823</sup> *Id.*

<sup>2824</sup> Ex. 847 at ¶ 21 (Bigelow Affidavit).

<sup>2825</sup> *Id.* at ¶ 26.

<sup>2826</sup> Ex. 848 at 1 (Tribune Board Meeting Minutes, dated November 13, 2008).



reviewed Tribune's operating performance, liquidity, near-term debt maturities, and capital structure, and considered various alternatives, including a potential restructuring and a series of asset dispositions.<sup>2827</sup>

## **2. Chapter 11 Filing.**

Following a Tribune Board meeting held on December 8, 2008,<sup>2828</sup> Tribune and certain of its Subsidiaries filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware.<sup>2829</sup> Thereafter, the Debtors continued to operate their businesses as debtors in possession under the jurisdiction of the Bankruptcy Court.<sup>2830</sup>

---

<sup>2827</sup> Ex. 848 (Tribune Board Meeting Minutes, November 13, 2008); Ex. 849 (Tribune Board Meeting Minutes, dated December 1, 2008); and Ex. 850 (Tribune Board Meeting Minutes, dated December 7, 2008).

<sup>2828</sup> Ex. 851 (Tribune Board Meeting Minutes, dated December 8, 2008).

<sup>2829</sup> Ex. 852 (Bankruptcy Petition); Ex. 853 (Bankruptcy Notice); Ex. 854 at 2 (Tribune Form 8-K, filed December 11, 2008).

<sup>2830</sup> Ex. 854 at 2 (Tribune Form 8-K, filed December 11, 2008).

**Table 1****Boards of Directors of the Guarantor Subsidiaries<sup>2831</sup>**

<b><u>Guarantor Subsidiary</u></b>	<b><u>Directors as of June 4, 2007</u></b>	<b><u>Directors as of December 20, 2007</u></b>
The Baltimore Sun Company	Crane H. Kenney Robert Gremillion	Crane H. Kenney Robert Gremillion Scott C. Smith
Chicago Tribune Company	Dennis J. FitzSimons Scott C. Smith	Dennis J. FitzSimons Scott C. Smith Crane H. Kenney
The Daily Press, Inc.	Crane H. Kenney Scott C. Smith Kathleen M. Waltz	Crane H. Kenney Scott C. Smith Kathleen M. Waltz
The Hartford Courant Company	Stephen D. Carver Robert Gremillion Crane H. Kenney	Stephen D. Carver Robert Gremillion Crane H. Kenney
Orlando Sentinel Communications Company	Dennis J. FitzSimons Scott C. Smith Kathleen M. Waltz	Dennis J. FitzSimons Scott C. Smith Kathleen M. Waltz
The Morning Call, Inc.	Scott C. Smith Kathleen M. Waltz	Scott C. Smith Kathleen M. Waltz
Sun-Sentinel Company	Dennis J. FitzSimons Scott C. Smith Robert Gremillion	Dennis J. FitzSimons Scott C. Smith Robert Gremillion
Tribune Interactive, Inc.	Timothy J. Landon Crane H. Kenney	Timothy J. Landon Crane H. Kenney
Tribune Los Angeles, Inc.	Crane H. Kenney	Crane H. Kenney
Tribune Media Services, Inc.	Scott C. Smith Crane H. Kenney David D. Williams	Scott C. Smith Crane H. Kenney David D. Williams
Tribune Broadcasting Company	Dennis J. FitzSimons John E. Reardon	Dennis J. FitzSimons John E. Reardon
KSWB Inc.	Crane H. Kenney John E. Reardon John J. Vitanovec	Crane H. Kenney John E. Reardon John J. Vitanovec
KPLR, Inc.	Crane H. Kenney John E. Reardon John J. Vitanovec	Crane H. Kenney John E. Reardon John J. Vitanovec
KTLA Inc.	Crane H. Kenney John E. Reardon	Crane H. Kenney John E. Reardon

<sup>2831</sup> Ex. 967 (Tribune Subsidiary Boards Chart).

<b><u>Guarantor Subsidiary</u></b>	<b><u>Directors as of June 4, 2007</u></b>	<b><u>Directors as of December 20, 2007</u></b>
KWGN Inc.	Crane H. Kenney John E. Reardon John J. Vitanovec	Crane H. Kenney John E. Reardon John J. Vitanovec
Tower Distribution Company	Crane H. Kenney John E. Reardon John J. Vitanovec	Crane H. Kenney John E. Reardon John J. Vitanovec
Tribune Broadcast Holdings, Inc.	Crane H. Kenney John E. Reardon John J. Vitanovec	Crane H. Kenney John E. Reardon John J. Vitanovec
Tribune Entertainment Company	Crane H. Kenney John E. Reardon John J. Vitanovec	Crane H. Kenney John E. Reardon John J. Vitanovec
Tribune Television Company	Crane H. Kenney John E. Reardon John J. Vitanovec	Crane H. Kenney John E. Reardon John J. Vitanovec
Channel 40, Inc.	Crane H. Kenney John E. Reardon John J. Vitanovec	Crane H. Kenney John E. Reardon John J. Vitanovec
Channel 39, Inc.	Crane H. Kenney John E. Reardon John J. Vitanovec	Crane H. Kenney John E. Reardon John J. Vitanovec
Tribune Television Holdings, Inc.	Crane H. Kenney John E. Reardon John J. Vitanovec	Crane H. Kenney John E. Reardon John J. Vitanovec
Tribune Television New Orleans, Inc.	Crane H. Kenney John E. Reardon John J. Vitanovec	Crane H. Kenney John E. Reardon John J. Vitanovec
Tribune Television Northwest, Inc.	Crane H. Kenney John E. Reardon John J. Vitanovec	Crane H. Kenney John E. Reardon John J. Vitanovec
WDCW Broadcasting, Inc.	John E. Reardon John J. Vitanovec	John E. Reardon John J. Vitanovec
WGN Continental Broadcasting Company	Crane H. Kenney John E. Reardon John J. Vitanovec	Crane H. Kenney John E. Reardon John J. Vitanovec
WPIX, Inc.	Crane H. Kenney John E. Reardon	Crane H. Kenney John E. Reardon
Tribune Finance, LLC	Sole Member <sup>2832</sup>	Sole Member <sup>2833</sup>

<sup>2832</sup> Tribune is the sole member of Tribune Finance, LLC. See Ex. 150 (Unanimous Written Consents of the Subsidiary Boards, dated June 4, 2007).

<sup>2833</sup> Tribune is the sole member of Tribune Finance, LLC. See Ex. 150 (Unanimous Written Consents of the Subsidiary Boards, dated June 4, 2007).

<b><u>Guarantor Subsidiary</u></b>	<b><u>Directors as of June 4, 2007</u></b>	<b><u>Directors as of December 20, 2007</u></b>
Homestead Publishing Company	Irving L. Quimby, Jr. John D. Worthington, IV	Irving L. Quimby, Jr. John D. Worthington, IV Crane H. Kenney Scott C. Smith
Patuxent Publishing Company	Irving L. Quimby, Jr. John D. Worthington, IV	Irving L. Quimby, Jr. John D. Worthington, IV Scott C. Smith
Chicagoland Publishing Company	Scott C. Smith Crane H. Kenney	Scott C. Smith Crane H. Kenney
Tribune Direct Marketing, Inc.	Crane H. Kenney Richard H. Malone	Crane H. Kenney Scott C. Smith
Virginia Gazette Companies, LLC	Crane H. Kenney Kathleen M. Waltz	Crane H. Kenney Kathleen M. Waltz Scott C. Smith
Forum Publishing Group, Inc.	Robert Gremillion Crane H. Kenney Scott C. Smith	Robert Gremillion Crane H. Kenney Scott C. Smith
Courant Specialty Products, Inc.	Stephen D. Carver Robert Gremillion Crane H. Kenney	Stephen D. Carver Robert Gremillion Crane H. Kenney
New Mass Media, Inc.	Stephen D. Carver Robert Gremillion Crane H. Kenney	Stephen D. Carver Robert Gremillion Crane H. Kenney
TMLH2, Inc.	Stephen D. Carver Robert Gremillion Crane H. Kenney	Stephen D. Carver Robert Gremillion Crane H. Kenney
Southern Connecticut Newspapers, Inc.	Crane H. Kenney Timothy P. Knight Durham J. Monsma	Crane H. Kenney Timothy P. Knight Mark W. Hianik
TMLS1, Inc.	Crane H. Kenney Timothy P. Knight Durham J. Monsma	Crane H. Kenney Timothy P. Knight Mark W. Hianik
Gold Coast Publications, Inc.	Robert Gremillion Crane H. Kenney Scott C. Smith	Robert Gremillion Crane H. Kenney Scott C. Smith
Distribution Systems of America, Inc.	Crane H. Kenney Timothy P. Knight Scott C. Smith	Crane H. Kenney Timothy P. Knight Scott C. Smith
Los Angeles Times Communications LLC	Dennis J. FitzSimons Scott C. Smith David D. Hiller	Dennis J. FitzSimons Scott C. Smith David D. Hiller
Tribune Manhattan Newspaper Holdings, Inc.	Crane H. Kenney	Crane H. Kenney
Tribune New York Newspaper Holdings, LLC	Crane H. Kenney Timothy P. Knight	Crane H. Kenney Timothy P. Knight

<b><u>Guarantor Subsidiary</u></b>	<b><u>Directors as of June 4, 2007</u></b>	<b><u>Directors as of December 20, 2007</u></b>
TMS Entertainment Guides, Inc.	Scott C. Smith Crane H. Kenney David D. Williams	Scott C. Smith Crane H. Kenney David D. Williams
Tribune Media Net, Inc.	Dennis J. FitzSimons Scott C. Smith Crane H. Kenney	Dennis J. FitzSimons Scott C. Smith Crane H. Kenney
Tribune National Marketing Company	Timothy J. Landon Crane H. Kenney Scott C. Smith	Timothy J. Landon Crane H. Kenney Scott C. Smith
Tribune Broadcasting Holdco, LLC	Sole Member <sup>2834</sup>	Sole Member <sup>2835</sup>
Chicagoland Television News, Inc.	Scott C. Smith Crane H. Kenney John E. Reardon	Scott C. Smith Crane H. Kenney John E. Reardon
5800 Sunset Productions Inc.	Crane H. Kenney	Crane H. Kenney
Tribune (FN) Cable Ventures, Inc.	Crane H. Kenney John E. Reardon John J. Vitanovec	Crane H. Kenney John E. Reardon John J. Vitanovec
WTXX Inc.	Crane H. Kenney John E. Reardon	Crane H. Kenney John E. Reardon
Tribune California Properties, Inc.	Crane H. Kenney John E. Reardon	Crane H. Kenney John E. Reardon
California Community News Corporation	Crane H. Kenney	Crane H. Kenney
Hoy Publications, LLC	Sole Member <sup>2836</sup>	Sole Member <sup>2837</sup>
Eagle New Media Investments, LLC	Sole Manager <sup>2838</sup>	Sole Manager <sup>2839</sup>
Stemweb, Inc.	Thomas S. Finke Timothy J. Landon	Thomas S. Finke Timothy J. Landon
ForSaleByOwner.com Corp.	Thomas S. Finke Timothy J. Landon	Thomas S. Finke Timothy J. Landon

<sup>2834</sup> Tribune is the sole member of Tribune Finance, LLC. See Ex. 150 (Unanimous Written Consents of the Subsidiary Boards, dated June 4, 2007).

<sup>2835</sup> Tribune is the sole member of Tribune Finance, LLC. See Ex. 150 (Unanimous Written Consents of the Subsidiary Boards, dated June 4, 2007).

<sup>2836</sup> Tribune is the sole member of Hoy Publications, LLC. See Ex. 150 (Unanimous Written Consents of the Subsidiary Boards, dated June 4, 2007).

<sup>2837</sup> Tribune is the sole member of Hoy Publications, LLC. See Ex. 150 (Unanimous Written Consents of the Subsidiary Boards, dated June 4, 2007).

<sup>2838</sup> Tribune is the sole manager of Eagle New Media Investments, LLC. See Ex. 150 (Unanimous Written Consents of the Subsidiary Boards, dated June 4, 2007).

<sup>2839</sup> Tribune is the sole manager of Eagle New Media Investments, LLC. See Ex. 150 (Unanimous Written Consents of the Subsidiary Boards, dated June 4, 2007).

<b><u>Guarantor Subsidiary</u></b>	<b><u>Directors as of June 4, 2007</u></b>	<b><u>Directors as of December 20, 2007</u></b>
Internet Foreclosure Service, Inc.	Thomas S. Finke Timothy J. Landon	Thomas S. Finke Timothy J. Landon
Eagle Publishing Investments, LLC	Sole Manager <sup>2840</sup>	Sole Manager <sup>2841</sup>
Star Community Publishing Group, LLC	Managing Member <sup>2842</sup>	Managing Member <sup>2843</sup>
KIAH Inc. (formerly known as KHCW Inc.)	Crane H. Kenney John E. Reardon John J. Vitanovec	Crane H. Kenney John E. Reardon John J. Vitanovec
Tribune ND, Inc. (formerly known as Newsday, Inc.)	Crane H. Kenney Timothy P. Knight Scott C. Smith	Crane H. Kenney Timothy P. Knight Scott C. Smith
Tribune MD, Inc. (formerly known as Newport Media, Inc.)	Crane H. Kenney	Crane H. Kenney
Homeowners Realty, Inc.	Thomas S. Finke Timothy J. Landon	Thomas S. Finke Timothy J. Landon
Chicago National League Ball Club, Inc.	Dennis J. FitzSimons Crane H. Kenney	Dennis J. FitzSimons Crane H. Kenney

<sup>2840</sup> Tribune is the sole manager of Eagle Publishing Investments, LLC. *See* Ex. 150 (Unanimous Written Consents of the Subsidiary Boards, dated June 4, 2007).

<sup>2841</sup> Tribune is the sole manager of Eagle Publishing Investments, LLC. *See* Ex. 150 (Unanimous Written Consents of the Subsidiary Boards, dated June 4, 2007).

<sup>2842</sup> Distribution Systems of America is the managing member, and Newport Media, Inc. is also a member, of Star Community Publishing Group, LLC. *See* Ex. 150 (Unanimous Written Consents of the Subsidiary Boards, dated June 4, 2007).

<sup>2843</sup> Distribution Systems of America is the managing member, and Newport Media, Inc. is also a member, of Star Community Publishing Group, LLC. *See* Ex. 150 (Unanimous Written Consents of the Subsidiary Boards, dated June 4, 2007).

**Table 2**  
**Officers of the Guarantor Subsidiaries<sup>2844</sup>**

Guarantor Subsidiary	Name	Position(s)
5800 Sunset Productions, Inc.	John E. Reardon	President
	David Berson	Vice President and Assistant Secretary <sup>2845</sup>
	Richard E. Inouye	Vice President
	Gina Mazzaferri	Vice President
	Crane H. Kenney	Secretary
	Mark W. Hianik	Assistant Secretary
	Charles J. Sennet	Assistant Secretary
	John F. Poelking	Treasurer
	Chandler Bigelow III	Assistant Treasurer
	R. Mark Mallory	Assistant Treasurer
	Patrick M. Shanahan	Assistant Treasurer
California Community News Corporation	Jeffrey M. Johnson	President <sup>2846</sup>
	David D. Hiller	President <sup>2847</sup>
	Tom Johnson	Publisher <sup>2848</sup>
	William H. Fleet	Publisher <sup>2849</sup>
	Robert E. Bellack	Vice President
	Mark H. Kurtich	Vice President
	David P. Murphy	Vice President
	Russ Newton	Vice President
	Crane H. Kenney	Secretary
	Mark W. Hianik	Assistant Secretary
	Julie K. Xanders	Assistant Secretary

<sup>2844</sup> Ex. 1005 (Chart of Officers of the Guarantor Subsidiaries). Unless otherwise indicated, the offices were held during the period from May 2, 2006 through at least December 20, 2007.

<sup>2845</sup> Mr. Berson no longer held these positions as of May 9, 2007.

<sup>2846</sup> Mr. Johnson no longer held this position as of October 5, 2006.

<sup>2847</sup> Mr. Hiller was appointed to this position as of October 5, 2006.

<sup>2848</sup> Mr. Johnson no longer held this position as of May 9, 2007.

<sup>2849</sup> Mr. Fleet no longer held this position as of May 9, 2007.

<b>Guarantor Subsidiary</b>	<b>Name</b>	<b>Position(s)</b>
	Robert E. Bellack	Treasurer
	Chandler Bigelow III	Assistant Treasurer
	R. Mark Mallory	Assistant Treasurer
	Patrick M. Shanahan	Assistant Treasurer
	Gary Strong	Controller <sup>2850</sup>
	Sam De Froschia	Controller <sup>2851</sup>
Channel 39, Inc.	John E. Reardon	President
	Richard Engberg	Vice President
	Robert Gremillion	Vice President
	Crane H. Kenney	Secretary
	Mark W. Hianik	Assistant Secretary
	John F. Poelking	Treasurer
	Chandler Bigelow III	Assistant Treasurer
	R. Mark Mallory	Assistant Treasurer
	Patrick M. Shanahan	Assistant Treasurer
	Cam Trinh	Controller
Channel 40, Inc.	John E. Reardon	President
	Audrey L. Farrington	Vice President
	Crane H. Kenney	Secretary
	Mark W. Hianik	Assistant Secretary
	John F. Poelking	Treasurer
	Chandler Bigelow III	Assistant Treasurer
	R. Mark Mallory	Assistant Treasurer
	Patrick M. Shanahan	Assistant Treasurer
	Peter D. Filice	Controller
Tribune Broadcasting Holdco, LLC <sup>2852</sup>	Donald C. Grenesko	President
	Chandler Bigelow III	Vice President
	Crane H. Kenney	Secretary
	Mark W. Hianik	Assistant Secretary

<sup>2850</sup> Mr. Strong no longer held this position as of May 9, 2007.

<sup>2851</sup> Mr. De Froschia was appointed to this position as of May 9, 2007.

<sup>2852</sup> Each of the officers was appointed to his respective positions as of May 25, 2007.



<b>Guarantor Subsidiary</b>	<b>Name</b>	<b>Position(s)</b>
	Chandler Bigelow III	Treasurer
	R. Mark Mallory	Assistant Treasurer
	Jack Rodden	Assistant Treasurer
	Patrick M. Shanahan	Assistant Treasurer
Tribune California Properties, Inc.	John E. Reardon	President
	David Berson	Vice President and Assistant Secretary <sup>2853</sup>
	Richard E. Inouye	Vice President
	Gina Mazzaferri	Vice President
	Crane H. Kenney	Secretary
	Mark W. Hianik	Assistant Secretary
	Charles J. Sennet	Assistant Secretary
	John F. Poelking	Treasurer
	Chandler Bigelow III	Assistant Treasurer
	R. Mark Mallory	Assistant Treasurer
	Patrick M. Shanahan	Assistant Treasurer
Tribune Direct Marketing, Inc.	Lou Tazioli	President and General Manager
	Scott G. Pompe	Vice President
	Crane H. Kenney	Secretary
	Mark W. Hianik	Assistant Secretary
	Phil Doherty	Treasurer
	Chandler Bigelow III	Assistant Treasurer
	Robert Delo	Assistant Treasurer
	R. Mark Mallory	Assistant Treasurer
	Patrick M. Shanahan	Assistant Treasurer
Tribune Entertainment Company	[Vacant]	President & C.E.O.
	Stephen J. Mulderrig	Executive Vice President
	L. Clark Morehouse III	Executive Vice President <sup>2854</sup>
	David Berson	Senior Vice President <sup>2855</sup>

<sup>2853</sup> Mr. Berson no longer held these positions as of May 9, 2007.

<sup>2854</sup> Mr. Morehouse was appointed to this position on July 20, 2006. Prior to July 20, 2006, Mr. Morehouse held the position of Senior Vice President.

<sup>2855</sup> Mr. Berson no longer held this position as of May 9, 2007.

Guarantor Subsidiary	Name	Position(s)
	Donna Harrison	Senior Vice President
	Richard E. Inouye	Senior Vice President
	Cindy Donnelly	Vice President
	Taylor Fuller III	Vice President
	Lee Gonsalves	Vice President <sup>2856</sup>
	William J. Hamm	Vice President <sup>2857</sup>
	Jay Leon	Vice President <sup>2858</sup>
	George C. Nejame	Vice President
	John Krobot	Vice President <sup>2859</sup>
	Crane H. Kenney	Secretary
	Mark W. Hianik	Assistant Secretary
	Richard E. Inouye	Treasurer
	Chandler Bigelow III	Assistant Treasurer
	R. Mark Mallory	Assistant Treasurer
	John F. Poelking	Assistant Treasurer
	Patrick M. Shanahan	Assistant Treasurer
	Stephen G. Santay	Controller
Tribune Finance, LLC	Donald C. Grenesko	President
	Chandler Bigelow III	Vice President
	Crane H. Kenney	Secretary
	Mark W. Hianik	Assistant Secretary
	Chandler Bigelow III	Treasurer
	R. Mark Mallory	Assistant Treasurer
	Jack Rodden	Assistant Treasurer
	Patrick M. Shanahan	Assistant Treasurer
Tribune Los Angeles, Inc.	Donald C. Grenesko	President
	Chandler Bigelow III	Vice President
	Jeffrey M. Johnson	Vice President <sup>2860</sup>

<sup>2856</sup> Mr. Gonsalves no longer held this position as of May 9, 2007.

<sup>2857</sup> Mr. Hamm no longer held this position as of May 9, 2007.

<sup>2858</sup> Mr. Leon no longer held this position as of May 9, 2007.

<sup>2859</sup> Mr. Krobot was appointed to this position as of May 9, 2007.

<b>Guarantor Subsidiary</b>	<b>Name</b>	<b>Position(s)</b>
	David P. Murphy	Vice President
	David D. Hiller	Vice President <sup>2861</sup>
	Crane H. Kenney	Secretary
	Mark W. Hianik	Assistant Secretary
	Julie K. Xanders	Assistant Secretary
	Chandler Bigelow III	Treasurer
	Robert E. Bellack	Assistant Treasurer
	R. Mark Mallory	Assistant Treasurer
	Patrick M. Shanahan	Assistant Treasurer
	Randy Sims	Controller <sup>2862</sup>
	Sam De Froschia	Controller <sup>2863</sup>
Tribune Manhattan Newspaper Holdings, Inc.	Donald C. Grenesko	President
	Timothy P. Knight	Vice President
	Crane H. Kenney	Secretary
	Mark W. Hianik	Assistant Secretary
	Terry Jimenez	Treasurer
	Chandler Bigelow III	Assistant Treasurer
	R. Mark Mallory	Assistant Treasurer
	Patrick M. Shanahan	Assistant Treasurer
Tribune Media Net, Inc.	Kenneth DePaola	President & C.E.O.
	Dana C. Hayes, Jr.	Senior Vice President <sup>2864</sup>
	Doug Thomas	Senior Vice President
	Lee Jones	Senior Vice President <sup>2865</sup>
	Barry Haselden	Vice President <sup>2866</sup>
	John Wollney	Vice President <sup>2867</sup>

<sup>2860</sup> Mr. Johnson no longer held this position as of May 9, 2007.

<sup>2861</sup> Mr. Hiller was appointed to this position as of May 9, 2007.

<sup>2862</sup> Mr. Sims no longer held this position as of May 9, 2007.

<sup>2863</sup> Mr. De Froschia was appointed to this position as of May 9, 2007.

<sup>2864</sup> Mr. Hayes no longer held this position as of May 9, 2007.

<sup>2865</sup> Mr. Jones was appointed to this position as of September 1, 2006.

<sup>2866</sup> Prior to May 9, 2007, Mr. Haselden also held the position of Managing Director.

<sup>2867</sup> Mr. Wollney was appointed to this position as of May 9, 2007.

Guarantor Subsidiary	Name	Position(s)
	Crane H. Kenney	Secretary
	Mark W. Hianik	Assistant Secretary
	Chandler Bigelow III	Assistant Treasurer
	R. Mark Mallory	Assistant Treasurer
	Patrick M. Shanahan	Assistant Treasurer
Tribune Media Services, Inc.	David D. Williams	President & C.E.O.
	Alexa A. Bazanos	Vice President
	Jay Fehnel	Vice President
	Michael Gart	Vice President
	Walter F. Mahoney	Vice President
	Steve Tippie	Vice President
	John Twohey	Vice President
	John E. Zelenka	Vice President <sup>2868</sup>
	Crane H. Kenney	Secretary
	Mark W. Hianik	Assistant Secretary
	Michael Gart	Treasurer
	Chandler Bigelow III	Assistant Treasurer
	R. Mark Mallory	Assistant Treasurer
	Patrick M. Shanahan	Assistant Treasurer
	Robin Mulvaney	Controller
Tribune New York Newspaper Holdings, LLC	Russel Pergament	C.E.O. <sup>2869</sup>
	Donald C. Grenesko	President
	Christopher Barnes	Publisher & General Manager <sup>2870</sup>
	Terry Jimenez	Publisher & General Manager <sup>2871</sup>
	Chandler Bigelow III	Vice President
	Crane H. Kenney	Secretary
	Mark W. Hianik	Assistant Secretary

<sup>2868</sup> Mr. Zelenka was appointed to this position as of May 9, 2007.

<sup>2869</sup> Mr. Pergament no longer held this position as of May 9, 2007.

<sup>2870</sup> Mr. Barnes held the position of Vice President from at least May 2, 2006 until August 31, 2006, when he was appointed Publisher and General Manager. Mr. Barnes no longer held these positions as of July 16, 2007.

<sup>2871</sup> Mr. Jimenez was appointed to these positions as of July 16, 2007.